COMPANY
SECRETARY'S GUIDE

POSITION, DUTIES & LIABILITIES
PROCEDURE & ROUTINE
WITH
COPIOUS NOTES ON COMPANY LAW.

BY

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PREFACE

This work is designed to serve as a concise and practical guide to the Company Secretary in carrying out the various duties and complying with the statutory obligations of his office. It is hoped that it will prove a useful aid to the company secretaries in connection with the practical side of their work. The number of pre-publication orders received for this book is a clear indication of the fact that such a book is really needed by Company Secretaries in India.

The scheme of the book, shortly stated, is first to equip the Secretary with a set of all the essential features of Company Law on various matters directly concerning him in the discharge of his daily duties; then to place before him, the recognised procedure of dealing with these matters and finally to enlighten him with information on his own legal position, powers, duties and liabilities. The book is, however, not intended to take the place of the standard publications on Company procedure but to serve as a handy reference book where the use of the larger works, is unnecessary, unavailable or impossible.

The information contained in the first part is the *minimum of company law* which a Company Secretary needs and must know. For the *maximum* he is advised to refer to the standard publication of the author *"Company Secretary's Manual."* The importance of this information to the secretary cannot be overstated. It is admitted that, in addition to the definite statutory duties which lie undisputably within his province, the company secretary is frequently compelled to rely upon his knowledge of company law in his capacity as an executive officer of

the board, and there are occasions when a faulty understanding or a defective judgment may cost his company dear. It is, indeed, the everyday experience of the secretary to consult his reference book in order to dispel some indecision on a point of law; when the memory, overcharged with other details, fails to recall the desired fact. This is not to suggest, even remotely, that the secretary and his book are efficient substitute for the solicitor and his training; the wise secretary is not necessarily he who contrives to dispense with legal aid, but one who knows at what point it should be invited.

Apology might almost seem necessary for including in this work some of the minor matters of company practice had not experience proved that it is these perhaps elementary but essential obligations which by reason of their apparently small importance are the more likely to be left undone or overlooked. Thus are caused complications, troubles and expense which it is the object of this Guide to avoid.

Couched in simple language, it aims at giving concisely, yet clearly, a true explanation of the multifarious matters that have to be dealt with by the Company Secretary and others engaged in the secretarial departments of Joint Stock Companies, and the idea throughout has been to show them how to deal with matters and not merely to tell them with what matters they have to deal. How far I have succeeded in this attempt, it is for those to judge and pronounce, for whom this book is meant.

Calcutta,
The 12th September, 1940. H. R. M.

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PART I

PRACTICAL NOTES ON COMPANY LAW TO GUIDE COMPANY SECRETARIES IN THEIR DUTIES FROM DAY TO DAY

CHAPTER I

INCORPORATION, NAME, OFFICE ETC.

Incorporation

The Company is deemed to have been registered and to have become a *legal persona* (i.e. to have commenced its Corporate Existence) the *first moment of the day* stated in the Certificate of Incorporation.

Name

1. The name of the Company must be kept "painted or affixed" on the outside of every office in English characters and when the Registered Office is situated beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular characters of the place (Sec. 73 (a)).

2. The name of the Company must also be engraven on its Seal and must appear in all documents and papers including letters, notices, etc., used by the Company (Sec. 73 (b) (c)).

3. The name of the Company must always be given exactly as registered and shown on the Certificate of Incorporation.

4. "Limited" must always be the last word in the Company's title; its omission can have serious results. *The Secretary will be personally liable* if he omits the word from the name of the Company upon any Bill of Exchange, Promissory Note, Cheque or Order for Goods, and the Company fails to pay the amount (Sec. 74 (2)).

5. Abbreviations "Ltd.," "Ld." or "Lim." can be used.

6. For *change of name* it is necessary—

(*a*) To pass a Special Resolution and file a printed or typewritten copy of the same with the Registrar;

(*b*) To obtain the consent of the Local Government to the proposed name and to file such consent with the Registrar;

(*c*) To obtain from the Registrar a Certificate of Incorporation of the new name, on the issue of which alone, the change of name shall be complete.

Change of name shall not affect the rights or obligations of the Company or render defective any legal proceedings by or against the Company which may be continued or commenced by its new name (Sec. 11).

Registered Office

1. The Company must have a Registered Office.

2. Any notice, summons, etc., will be duly served if the same be left or sent by post to the Registered Office of the Company (Sec. 148).

3. When there is no Registered Office notices may be served on the *Secretary* or *Director* at the office which is not the registered office.

4. The Company must file notice of change of the situation of Registered Office with the Registrar within 28 days of such change (Sec. 72).

Minimum Number of Members

1. If business is carried on for more than six months by a Public Company with the number of Members reduced below seven or by a Private Company with the membership

reduced below two, every Member of such Company *knowing the facts* becomes severally liable for the whole of the debts of the Company contracted during the time business is so carried on after the six months (Section 147).

2. The Company may also be wound up by the Court (Section 162).

3. Representatives of a deceased mamber may not, for the purposes of the section, be counted.

CHAPTER II

SHARE CAPITAL

1. Wherever the authorised capital of a company is published, subscribed and paid-up capital must also be prominently stated there.

1A. A Company may alter its share capital if authorised by the articles of association, by increasing its share capital by the issue of new shares; or by consolidating or dividing its shares or by converting the paid up shares into stock, or by subdividing its shares into shares of smaller amount than is fixed in the memorandum; or by cancelling shares which have not been taken up. These powers must be exercised by the Company in a general meeting. The company is to file a notice of the alteration with the Registrar within 15 days of the exercise of the power. (Sec. 50).

2. (a) When the rights of the different classes of shares are fixed by the Memorandum, the same can only be altered by a special resolution subject to the confirmation by the Court. (Sec. 54).

(b) But when those rights are fixed by the Articles they can be altered by a special resolution of the company without the intervention of the Court. (Sec. 20).

(c) Section 54 applies only to two modes of reorganising share capital, viz., the consolidation of shares of different classes into one class, and the division of shares of one class into shares of different classes, but does not apply to a scheme for the total abolition of the exiting classes and the creation of fresh classes.

3. (i) Share capital of a limited company can be reduced, only when it is authorised by the articles, by a special resolution of the company, subject to the confirmation by the Court. The ways in which such reduction can be effected are, (a) by extinguishing or reducing the liability on any of its shares in respect of share capital not paid up; or (b) either with or without extinguishing or reducing liability on any of its shares, by cancelling any paid up share capital which is lost or unrepresented by available assets; or (c) either with or without extinguishing or reducing liability of any of its shares by paying off any paid up share capital which is in excess of the wants of the company. (Sec. 55).

(ii) When reduction of capital involves diminution of liability in respect of unpaid capital or any payment to the shareholders of any paid-up share capital, creditors settled by the Court are to be given notice of such reduction, so that they may object to it. (Sec. 58). When the Court is satisfied that all the creditors have either consented to such reduction or their claims have either been secured or satisfied, it will confirm the reduction. (Sec. 60). Thenceforward the company will have to use after its name, *"and reduced"*. But the words may be dispensed with where reduction does not involve any diminution of liability, etc. (Sec. 57).

4. The payment of dividends out of capital, issuing shares at a discount (except under Sec. 105A) and purchasing the Company's own shares (except under Sec. 105B) *are all unlawful reductions of capital.*

5. Sec. 105 B lays down conditions under which a Company may issue *Redeemable Preference Shares.* The necessary authority to redeem must be contained in the

Articles, redemption can only be effected out of profits available for dividend or out of the proceeds of a new issue made for the purposes of the redemption; the shares to be redeemed must be fully paid, there must be a premium on redemption, and if redeemed out of proceeds of fresh issue any premium must have been provided out of the profits of the Company.

6. *Shares may now be issued at a discount* subject to the following conditions (Sec. 105 A) :—

(i) (a) That the shares so issued are of a class that have already been issued, that is, an original issue of shares cannot be at a discount;

(*b*) That the issue at a discount has been authorised by a resolution of the Company in general meeting followed by the sanction of the Court;

(*c*) That the resolution specified the maximium rate of discount, not exceeding 10 per cent. in any case;

(*d*) That not less than a year has elasped since the Company was entitled to commence business; and

(*e*) That the shares so issued are issued within 6 months after the date of the Court's sanction or within such extended time as the Court may allow.

(ii) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of document in question.

CHAPTER III

ALLOTMENT AND COMMENCEMENT OF BUSINESS ETC.

Allotment

1. An application for shares in response to which there is a communication that an Allotment has been made constitutes a contract from which neither the applicant nor the company can withdraw.

2. But the Allotment must be made within a reasonable time or it may be repudiated. Until allotment is made the applicant can withdraw either by oral or written communication.

3. Letters of allotment duly stamped with 2 annas stamp should be sent as soon as possible.

4. It is not necessary that allotments should all be made at the same time; applications and allotments may be made at any time so long as there are unissued shares in the Company's Capital.

5. In case of a Public Company, the directors will not proceed to the *first allotment* unless—

(*a*) Either a Prospectus (in case of public issue) or Statement in lieu of Prospectus has been filed.

(*b*) And the amount stated in the Prospectus or named in the articles (or in Statement in Lieu of Prospectus when Statement in lieu of Prospectus is filed) has been subscribed and the sum payable on application (which must not

be less than 5 per cent. of the nominal value of each share) has been paid to and received by the Company (Sec. 101).

These restrictions *do not apply to a Private Company.*

6. Conditions for valid allotment are—

(*a*) In the absence of special provisions in the articles, the allotment should be made by the directors as a board. They cannot delegate the the power unless so authorised by the articles.

(*b*) In the matter of exercise of powers of allotment the directors are to be treated as trustees.

(*c*) Allotments must be made within a reasonable time.

7. *Return of Allotment*—A return of allotment must be field with the Registrar within one month after the allotment.

8. *No Allotment*—When the company is unable to procure subscribers for the minimum subscription within 180 days after the first issue of the prospectus, the amount received from the subscribers must be refunded to them and if any money is not so repaid within 190 days after the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at 7 per cent. per annum.

9. In the case of shares allotted either wholly or partly for consideration other than cash there must also be filed within the same period (1) a Contract or Contracts for Sale or Services or other consideration in respect of which the Allotment was made stamped with the proper duty, and (2) a Contract or Contracts constituting the title of the

Allottees to Allotment also duly stamped. In the absence of a Contract (No. 1) above in writing there must be filed a Statement in the prescribed form containing the required Particulars which must bear a stamp of the same amount as would have been required on a written contract (Sec. 104).

Commencement of Business

1. A Private Company is entitled to commence business as soon as incorporated.

2. A Public Company cannot commence business or exercise any borrowing powers unless the following conditions are satisfied, namely:—

(*a*) That the amount of the minimum subscription has been subscribed and the shares allotted accordingly;

(*b*) That every director has paid for shares taken by him his proper proportion (amount due on application and allotment) on shares taken or contracted to be taken by him;

(*c*) That a declaration made by the secretary or a director stating that the above conditions have been satisfied, has been filed with the Registrar in the prescribed form;

(*d*) That when there is no prospectus, a statement in lieu of prospectus has been filed with the Registrar;

(*e*) A certificate by the Registrar declaring that the company is entitled to commerce business has been issued. (Sec. 103).

3. Any contract made by the company before it is entitled to commence business shall be provisional only and not binding until that date (Sec. 103 (3)).

Share Certificates

1. Every Shareholder of a Company is entitled to have a Certificate of Shares allotted to him (Sec. 108).

2. Share Certificates must be completed and ready for delivery *within three months after allotment or within three months after the registration of transfer* (*Sec. 108*).

3. A Share Certificate must bear the Common Seal of the Company and must specify the shares held by the members named therein (Sec. 29). It must bear a stamp of 2 annas.

4. A Shares Certificate does not confer an absolute title to the Shares specified therein, and is *prima facie* evidence only of title of the Shareholder. The Holder of a forged Certificate has no remedy against the Company, even though the forgery be that of the Secretary.

5. The Company is prohibited from entering upon any Share Certificate a note or memorandum that it has a lien on any of the Shares covered by the Certificate.

6. *Secretary's Duty.*—Before issuing a certificate the Secretary must satisfy himself that the particulars given in the Certificate are also entered in the register of members. He is to check carefully the number of shares covered by the certificate and the amount paid in respect of the same. It is his duty to see that the certificates are prepared and made ready for delivery within the statutory period mentioned above.

CHAPTER IV

CALLS, TRANSFER & TRANSMISSION OF SHARES

Calls on Shares

1. In case of Shares issued partly paid up the amounts payable on application and allotment are not "Calls".

2. Shareholders of the Company are liable to pay up to the full nominal amount of their shares, but, subject to any special conditions of allotment, nothing is payable until a call is made.

3. In the absence of any special arrangement or conditions calls must be made rateably on all the holders of shares partly paid up.

4. The joint-holders of a Share are severally as well as jointly liable for the payment of all calls, but Notice of a Call need only be sent to the first-named of two or more holders.

5. Where Shares are transferred after a call is made but before the call is paid the liability to pay the call is not transferred to the transferee.

6. When a call is made it is the duty of the Directors to compel by legal process if necessary every member to pay the amount due including any interest, at the rate fixed by the Articles, on Calls in arrear.

7. *Essentials of a Valid Call*—The following points should be particularly noted in making a call, as a violation of any of the same may render the call illegal or *ultra vires.*

(*a*) The provisions of the Articles and prospectus regarding the making of calls should be

strictly observed (*Alma Spinning Co., In re, bottomley's case,* 16 C. D. 681).

(*b*) The meeting of the board of directors should be duly convened for making calls.

(*c*) There must be necessary quorum of directors present in the meeting.

(*d*) The directors must be persons who have been duly appointed as such, and who are properly qualified under the provisions of the articles. But if there is a clause in the Articles, rendering valid the acts of the directors, even where there is some defect in their appointment and their being disqualified at the time of doing the act, such Articles will make a call valid when made by such directors inspite of the defect or irregularity—(Sec. 86), (*Dawson v. African Consolidated etc. Co.* (1898) 1 Ch. 6).

(*e*) The power of making calls must be exercised for the benefit of the Company. When a call is made for a purpose beyond the objects of the Company, it would be illegal (*Alexander v. Automatic Telephone Co.* (1900) 2 Ch. 56).

(*f*) The resolution for making a call must specifically contain the amount of the call, the time within which it is to be paid and the place where to be paid and the person to whom the payment is to be made. The call would be improper if it is made upon the Share-holders when the directors themselves pay nothing on their own shares (*Alexander v. Automatic Telephone Co.,* (1900) 2 Ch. 56).

(*g*) A call irregularly made can be confirmed at a meeting at which there is no irregularity.

8. *Secretary's Duty*—He is to see that the resolution for making call has been properly and validly made. It is his duty, to make a note of the resolution, and then prepare and send out notice of call to every Share-holder, and have them served in the manner laid down in the Articles. Usually such notices are sent by post. The Shareholder should be asked to forward the receipt obtained by him for the payment of the call money, and to forward the share certificate, so that endorsement may be made on the share certificate regarding such payment.

Payments in respect of calls are to be entered in the cash book and in the register of members against the name of the respective share-holders by whom payments are made. Immediately after the due date, a list of share-holders who have failed to put in the call money is to be prepared, and corrected daily, as payments may be received even after the due date.

9. *Calls-in-Advance*—The following points should be noted in this connection—

(*a*) The directors may be authorised by the Articles to receive payment from the shareholders willing to make the same, of any money uncalled, in respect of any share. Such advance payment may bear interest at a fixed rate—(Sec. 49 (2) and Table A, Cl. 17).

(*b*) The payment of such interest in the absence of profit may be made out of the Capital of the Company (*Lock v. Queensland Investment Co.*, (1896) A. C. 461).

(*c*) The powers given to the directors for receiving such advance payment must be exercised for the benefit of the Company.

Transfer of Shares

1. The original allottee or shareholder remains entitled to shares with the benefits and subject to the obligations attaching thereto until he has parted with them either (a) by transfer (b) by death, bankruptcy or lunacy (i.e. "Transmission") or (c) by forfeiture or (d) by surrender.

2. The right of a Shareholder to the shares in a Company held by him is a transferable right and is transferable like a movable property (Sec. 28).

3. The Form of Transfer must be signed both by the Transferor and Transferee to justify the latter being entered on the Register of Members.

4. There must be an Instrument of Transfer duly stamped; oral transfer, which would avoid transfer duty will not suffice (Sec. 34).

5. To avoid difficulties when entering up the Register of Members the transfer should always be to an individual or individuals but not, to a firm.

5. To avoid difficulties when entering up to Register through Court, held by a member, irrespective of any provision in the Articles (*Mohidin Pichai v. Tinne-Velley Mills, Ltd.*, A. I. R. (1928) Mad. 571).

7. The Secretary is one of the Officers (also mentioned in Sec. 62 of the Indian Stamp Act) responsible for seeing that the Instrument of Transfer is properly executed and stamped. Passing an unstamped or insufficiently stamped Transfer render him liable to penalties.

8. The new Certificate (or Certificates where the Transferor is transferring part only of his holding) must be delivered within three months after the registration of the Transfer (Sec. 108).

9. If a Transfer is refused, notice of such refusal must be sent to the transferee and the transferor within two months from the date of lodgment of the transfer (Sec. 34) and the Instrument of Transfer should be returned to the applicant.

10. Where an application for partly paid shares is made by the transferor, no registration must be effected unless notice of the application is given to the transferee. If no objection is, however, received from the transferee the transfer can be registered and transferee's name entered on the Register of Members (Sec. 34 (1)).

11. *Restriction on Transfer—*

(*a*) A Company can refuse to recognise a transferee who is a minor, lunatic or insolvent and may decline to register the transfer of shares which are not fully paid up, when the directors do not approve the transferee, (*Moffat v. Farquhar* (1877) 7 Ch. D. 591) or in cases where a Company has a lien on the shares.

(*b*) A Company may refuse to register a transfer of shares when the amount of call on such shares remains unpaid, if it be so authorised by its articles.

(*c*) Total restriction against transfer of shares may be invalid but a restriction in the way of giving right of pre-emption is valid (*Oantorio*

Jockey Club v. Samuel Mebride, 30, Bom. L.R. 1932 (P. C.)).

12. Application for Transfer may be made either by the Transferor or by the Transferee (Sec. 34 (1)).

13. When the transfer is registered by the Company, the transferee's name must be entered in the Register of Members and a new Certificate is to be issued to the transferee. Until the name of the transferee is entered in the Company's Register, the transfer remains incomplete (*Amarendra v. Moni Manjari Debi,* 48, Cal. 986).

14. No charge can be made for registering a transfer unless expressly authorised by the Articles.

15. *Secretary's Duty—*

(*a*) He must particularly note whether the document of transfer is dated, correctly signed by the transferor and transferee in presence of witnesses, and is duly stamped.

(*b*) He should also see that the addresses and descriptions given there are complete and accurate. He is further to note as to whether the conditions laid down in the Articles have been fully complied with.

(*c*) The certificate of shares or the allotment letter sent along with the instrument of transfer should be carefully looked into, in order to see whether the entries in the certificate tally exactly with the entires recorded in the Register of Members. Without the production of the certificate of shares, the Secretary should not recognise any transfer.

(*d*) It is always desirable that he should give a notice to the registered shareholder about the presentation of the instrument of transfer.

(*e*) A receipt may be given to the person who submits the instrument of transfer for registration by the Company, but such receipt will not bind the Company to recognise the transferee's title or to issue a certificate (*Longman v. Bath Electric Tramways Ltd.* (1905), 1 Ch. 446).

(*f*) He should enter on the back of the old certificate particulars as to the date of transfer number of shares, distinctive numbers, the name of transferee, transfer number, by whom left, with director's initials.

(*g*) The details of the transfer are to be entered in the register of transfers.

(*h*) Then the matter is to be placed before the board of directors for their approval and for signing and sealing of the new certificate for the transferee.

(*i*) A balance ticket is to be given to the transferor with respect to the balance of his shares covered by his share certificate which is not disposed of by the instrument of transfer. The transferor is entitled to a new certificate for the shares remaining with him if he ask for it on his handing over the balance ticket.

(*j*) He is to record the details of the transfer in the Register of Members.

(*k*) The new certificate is to be sent to the transferee accompanied by an acknowledgment receipt for the same, to be returned.

Transmission of Shares

1. By transmission, as distinguished from transfer of shares, is meant the passing of the title to shares from one person to another by an act or operation of law. Thus transmission of shares is effected either by the death of the shareholder or by his insolvency or by his lunacy.

2. *Death of a Shareholder*—

(*a*) On death of a shareholder his shares vest in his personal representative and his estate remains liable for the amount unpaid on his shares. When the Company has no notice of the death of the shareholder and as to his representatives, a notice served at the registered address of the deceased shareholder would be a valid notice.

(*b*) When the sole holder of a share dies, the Company cannot recognise any person as his legal representative, unless the directors are satisfied by the production of probate or letters of administration or succession certificate or in any other mode as laid down in the Articles, as to the title of the applicant to be registered as member in place of the deceased shareholder (Table A, Cl. 21).

(*c*) The Directors may register such representative as a member in place of the deceased shareholder (*Hackney Pavilion Ltd.*, (1924) 1, Ch. 276). Such representative is entitled to vote

at General Meetings (*Marks v. Financial News Ltd.*, (1919) W. N. 237).

(*d*) The person entitled to a share by reason of the death of a shareholder may apply either for registering his name as a member or may transfer such share to another person.

(*e*) In case of the death of one of the jointholders of shares, the survivor may be registered as the member upon his producing a death certificate of the deceased along with a declaration as to such death and the identity of the deceased. (Table A, Clause 22).

3. *Insolvency of a Shareholder—*

The person (Official Assignee or Official Receiver) entitled to a share by reason of the insolvency of the member, may upon satisfying the directors as to his right, either claim to be registered as a member in respect of the shares or may transfer such share to some body else (Table A. Cl. 22).

4. *Lunacy of a Shareholder—*

When a shareholder becomes lunatic, his guardian appointed by the Court, would be entitled to retain or transfer his share under the direction of the Court.

5. *Right to Dividend—*

The person who becomes entitled to a share by the death or insolvency or lunacy of the holder thereof, will be entitled to the same dividends and other advantages to which he would be entitled, if he were the registered holder of the share. But before he is so registered as a member,

he shall not have any right of membership in relation to meetings of the company (Table A. Cl. 23).

6. *Secretary's Duty*—

No action or step should be taken by the Secretary with regard to transmission of shares *unless* any probate, succession certificate etc., in *case of the death* of a shareholder is produced to him. The Official Assignee or Official Receiver in *insolvency* must produce an office copy of his Certificate or Order of Appointment, and the Guardian or Committee of a lunatic, the Order of the Court.

He must enter in the Register of Members the fact of the death, insolvency or lunacy of a shareholder and of the names and addresses of his *representatives* or the persons to whom they transfer, whether legatee, next-of-kin or purchaser. He must also retain the signature of the representative.

The names of representatives cannot be entered on the Register of Members with a statement that they are "Trustees" (Sec. 33). Either the trustees are registered as the holders (in which case they fall personally under any obligations or liabilities attaching to the shares) or the *beneficial holders* are placed upon the register and assume full control over the shares.

CHAPTER V

LIEN, FORFEITURE & SURRENDER

Lien on Shares

1. The Articles ordinarily empower a company to have a lien on partly paid-up shares for all moneys payable by the shareholders to the Company.

2. The company may have a lien upon fully paid shares also, when the Articles give such right. But the Articles cannot be altered for extending the lien to fully up shares (*Hopkinson v. Mortimer Harby & Co.* (1917) 1 Ch. 646).

3. The Company's lien is an equitable charge in favour of the company against the share.

4. The lien is not destroyed by the death of a shareholder when it is created before his death (*Allen v. Gold Reefs* (1900) 1 Ch. 656).

5. *Alteration of Articles for creating lien*—A lien may be taken by altering the Articles after the issue of the shares, but it will not be effective against a transfer which is lodged before the resolution creating the lien is passed (*Mc Arthur Ltd. v. Gulf Line* (1909) S. C. 732).

6. Lien may be extended to any dividend declared and not actually paid on the shares.

7. When the Articles authorise the company to decline to register a transfer of shares on which it has a lien, it can refuse to register such transfer. The lien would be lost if the company registers a transfer of shares subject

to the lien (*Re. Northern Assam Tea Co.* (1870) L. R. 10 Eq. 458).

8. Lien may be enforced by the sale of the shares under the provisions of the articles; even apart from the article the company may bring a suit for enforcing its lien by the sale of the share.

9. A company is not entitled to enforce its lien by forfeiture even if the Articles give such powers (*Hopkinson v. Mortimer Harby & Co.* (1917) 1 Ch. 646).

10. *Purchaser's right*—The purchaser shall be registered as the holder of the share which has been sold for the satisfaction of the company's lien. Any irregularity or invalidity with reference to the same shall not affect his title (Table A. Cl. 11). The purchaser of a number of shares may claim that the company's lien should be satisfied out of other shares of the vendor which have not been transferred to him (*Gray v. Stone and Funnell* (1893) 69 L. T. 282).

11. *Secretary's Duty*—He should from time to time prepare a list of shares upon which the company has a lien. This will help him in checking any share which is proposed to be transferred, and will enable him to refuse to recognise such transfer, for "the company is not entitled to enter either in its register of members or in the certificate of shares a note of any lien it may have" (*W. Key & Son* (1902) 1 Ch. 467). He should be very particular in following the exact procedure laid down in the Articles for enforcing a lien by the sale of the share against which the lien is available. If there is any omission or irregularity in sending a demand letter for the amount of the lien, or

in sending proper notice according to the Articles, the share-holder may claim damages for any loss.

The Secretary is to send the balance of the price received by the sale of the share in enforcing its lien, to the shareholder concerned after satisfying the dues of the company in respect of the lien. (Table A. Cl. 11).

Forfeiture of Shares

1. The power to the Directors to forfeit shares for non-payment of call money must be contained in the Articles, otherwise the directors cannot forfeit.

2. If the necessary provisions are not contained in the Articles, they must be amended before any steps can be taken to forfeit shares.

3. It has been held that to constitute a valid forfeiture there must not only be a power to forfeit, an intention to forfeit, and a notice of that intention under proper circumstances but the said intention must be further carried out by the passing of a proper resolution. Therefore, merely because there is a default in payment of calls, it does not by itself create a forfeiture (*Gokul Chand v. Lahore Bank*, 28 I. C. 431).

4. Such power of forfeiture should, therefore, be very sparingly exercised under proper legal advice, otherwise if there is any flaw at any stage of the proceeding culminating in a forfeiture, the defaulting member may subsequently take advantage of the same.

5. When there is power given by the Articles to annul a forfeiture it must be exercised with the consent of the shareholder.

6. The power of forfeiting shares must be exercised for the benefit of the company. If a share is forfeited only for the purpose of relieving a friend from liability (whether he be a shareholder or a director) it would be an improper forfeiture and the liability of the party would continue.

7. The following are the *requisites of a valid forfeiture*:—

(*a*) The power to forfeit must be in the articles;

(*b*) It must be done by properly appointed directors and in a regularly constituted meeting of the board;

(*c*) It must be for a proper cause, such as the non-payment of calls;

(*d*) Notice of intention to forfeit should have been given;

(*e*) Notice of the passing of resolution forfeiting shares should also have been given.

8. Forfeited shares cannot be cancelled without the leave of the Court as this would amount to a reduction of capital.

9. If shares are forfeited the calls in arrears can still be recovered (if so provided by the articles) by a suit brought by the company. But as the person whose shares are forfeited ceases to be a member he cannot be sued for any further calls that may be made.

10. If the Articles so authorise, the Directors may re-issue forfeited shares, and such re-issued (sold) shares may be credited as paid up to an amount not exceeding the

sum paid up thereon by the forfeiting shareholder. Any amount remaining unpaid on the shares may be called up as and when the Directors think fit, and if the former holder of the shares make any payment the liability of the new holder will be correspondingly reduced.

11. A purchaser of forfeited shares cannot as a rule vote until all arrears of calls are paid.

12. Forfeiture of shares for non-payment of debts other than calls in arrears is void as that would amount to a purchase by the company of its own shares.

13. *Secretary's Duty.*—The special provisions in the Articles regarding forfeiture should be particularly noted and followed by the secretary. Under the instruction of the board it is his duty to send the notices and letters mentioned above to the defaulting member.

When shares are forfeited he must be very particular in drawing up a list of share certificates, allotment letters, or other documents of title with reference to the forfeited shares, so that the said list may be readily available and referred to, for the purpose of checking that the said forfeited shares may not be disposed of as partly paid shares by the holders thereof.

The secretary is to see that the procedure of forfeiture as laid down in the articles has been strictly complied with. He is to record a forfeiture in the books of the company, as an entry like that will be a presumptive evidence that the forfeiture had been properly made after the passing of a proper resolution to that effect (*in re Mirza Ahmed* (1924) A. I. R. Mad. 703).

Surrender of Shares

1. Power to accept surrender of fully paid-up shares must be specially given under articles (*Mangal Sain v. Indian Merchant Bank*, A. I. R. (1928) Lahore 240).

2. Frequently directors are empowered by the articles to accept surrenders of shares as a short cut to foreiture. But a Surrender of Shares which are not fully paid up can only be legal where a forfeiture would be justified (*Mangal Sain v. Indian Merchant Bank* (Supra)).

3. A surrender of shares in return for money paid by the company is a purchase by the company of its own shares and is therefore void.

4. Similarly a surrender of partly paid shares is void as it amounts to a purchase of its own shares by the company.

5. A surrender of shares will be void if it is accepted for the purpose of relieving a member from his liability.

6. From the above it is clear that the valid form of surrender of shares is when the right to forfeit has already arisen and it is adopted a a short cut to forfeiture. As a matter of fact, forfeiture is a statutory exception to reduction of capital without leave of the Court and is the only exception. (*Per* Cozens-Hardy, L.J).

CHAPTER VI

COMMISSION, BROKERAGE ETC.

1. *Underwriting Commission* is the commission paid to a person called the *underwriter* in consequence of an agreement (called 'the Underwriting Agreement') whereby previously to an offer of a company's shares to the public (i.e., before the issue of the 'Prospectus') for subscription, the underwriter undertakes to take up the whole or a portion of such (if any) of the offered shares as may not be subscribed for or taken up by the public.

2. *Brokerage* is a payment made to a person for placing shares without involving him in any risk of having to take the shares. A payment is brokerage only, if it is paid to "Share-Brokers or Stock-Brokers", bankers and the like, who exhibit prospectuses and send them to their cutomers and by whose mediation the customers are induced to subscribe. The person to whom it is paid must be one who, in some way, carries on the business of a broker.

3. The essence of Section 105 is that no "company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe for or procuring subscriptions for any shares, *unless*—

(1) The payment is actually a commission (and not a colourable pretext for the issue of shares at discount);

(2) The payment of the commission is authorised by the articles;

(3) The commission paid or agreed to be paid does not exceed the amount or rate so authorised; and

(4) The amount or rate per cent of commission paid or agreed to be paid is:—

(*a*) in the case of shares offered to the public for subscription, *disclosed in the Prospectus;* or

(*b*) in the case of shares not offered to the public for subscription, *disclosed* in the Statement in Lieu of Prospectus, or in a Statement in the Prescribed Form and filed with the Registrar."

4. The underwriting agreement is provisional and it does not ripen into a valid contract until the company is entitled to commence business. Therefore, before making any allotment, a company is to see that the underwriters have paid their application money.

5. When the rate or amount of commission is not disclosed in the agreement, the claim for such commission cannot be enforced even when the shares have been allotted (*Andreae v. Zinc Mines of Great Britain* (1918) 2 K. B. 454).

6. The underwriting contract is enforceable against the executors of a deceased underwriter (*Warner Engineering Co.* v. *Brennan* (1914) 30 T.L.R. 191).

7. Any commission illegally paid is recoverable by the company from the recepient (*Dominion of Canada etc.* v. *Brigstocke* (1911) 2 K. B. 648).

8. When the articles allow a commission at a certain rate the granting of a commission in a lump sum is illegal (*Booth* v. *New A. G. Mining Company* (1903) 1 Ch. 295).

9. *Disclosure of Payment of Commissions etc*:—Any sums paid by way of commission in respect of any shares must be shown—

(1) in every Balance-sheet of the company until the whole amount thereof has been written off (Section 106);

(2) in the prospectus or in the statement in lieu of prospectus or in a statement in the prescribed form (Section 105), and

(3) in the annual summary next made after the payment of the commission (Section 32).

10. "Table A" does not authorise the payment of brokerage and commission, therefore where Table A is adopted, these payments cannot be made even though allowed by the memorandum, as the Section requires the commission etc., to be authorised by the *Articles*.

11. The above commissions refer to payments out of shares or capital money, but there is nothing in the Act to prevent commission etc. being paid out of profits.

CHAPTER VII

RIGHTS OF SHAREHOLDERS

As it is necessary that the Secretary should know the rights, privileges and powers of the shareholders particularly in view of the Amending Act of 1936 increasing their powers to a considerable extent, these are stated in this chapter in a summarised form.

A. Individually.

Individually every shareholder of a *public* Company has the following rights:—

1. To transfer shares subject to provisions in the articles (Sec. 34);

2. To receive:—

   (*a*) a copy of the Statutory Report at least 21 days before the statutory meeting (Sec. 77), and

   (*b*) a copy of the Balance-Sheet, Profit and Loss Account, Auditor's Report and the Director's Report at least 14 days before the date of the annual general meeting (Sec. 131);

3. To receive notice of the meetings of the company together with the agenda of business (Sec. 79);

4. To inspect:—

   (*a*) The Register and Index of Members (Sec. 36),

   (*b*) Minute Book of the general meetings (Sec. 83),

   (*c*) Register of Directors, Managers and Managing Agents (Sec. 87),

(*d*) Register of Contracts and Arrangements in which directors or managing Agents are interested (Sec. 91A),

(*e*) Copies of Mortgages and Charges and the Company's Register of Mortgages (Sec. 124), and

(*f*) Register of Debenture Holders if kept by the Company (Sec. 125).

5. To be furnished with a copy of:—

(*a*) Memorandum and Articles of Association within 14 days after request. (Sec. 25).

(*b*) A copy of Register of Members (Sec. 36),

(*c*) A copy of the Minutes of General Meetings within 7 days after request (Sec. 83),

(*d*) A copy of the Register of Debenture Holders (Sec. 125) and

(*e*) Extra copies of Balance-sheet and Profit and Loss Account (Sec. 135).

6. To be present and vote at meetings, personally, by proxy or as proxy of other members (Sec. 79).

7. To petition to the Court:—

(*a*) For rectification of Register of Members if any name has been fraudulently entered in or omitted from it (Sec. 38),

(*b*) For directing the calling of an annual general meeting (Sec. 76), and

(*c*) For a compulsory winding-up on the ground of default in filing the Statutory Report (Sec. 166).

B. Collectively.

Collectively the shareholders in a general meeting have the following rights:—

1. By *Ordinary Resolution* and by a *simple majority* of votes to:—

(*i*) Alter the share capital (Sec. 50);

(*ii*) Adopt statutory report (Sec. 77);

(*iii*) Adopt Balance-Sheet and Accounts (Sec. 131);

(*iv*) Elect directors (Secs. 83B & G);

(*v*) Declare dividends (Clause 95 of Table A);

(*vi*) Appoint auditors (Sec. 144);

(*vii*) Transact business of the annual general meeting (Sec. 76);

(*viii*) Sanction the sale or disposal of the undertaking or remit any debt due by a director (Sec. 86H);

(*ix*) Appoint or remove managing agents (Secs. 87B); and

(*x*) Wind up the company, when the period fixed for the operations of the company by its articles, expires or any specific event mentioned in the articles occurs (Sec. 203).

2. By *Extraordinary Resolution* by 14 days' notice and by *three-fourths majority* of votes to:—

(*i*) Remove a director (Sec. 86G); and

(*ii*) Wind up a company when the company is unable to pay its debts (Sec. 203 (3)).

3. By *Special Resolution* by 21 days' notice and by a *three-fourths majority* of votes to:—

(*i*) Alter the name of the company subject to the approval of the Local Government (Sec. 11);

(*ii*) Alter the objects and change the place of its registered office from one province to another (Sec. 12);

(*iii*) Alter the articles (Sec. 20);

(*iv*) Reorganise share capital (Sec. 54);

(*v*) Reduce share capital subject to confirmation by Court (Sec. 55);

(*vi*) Alter memorandum to render unlimited the liability of the directors (Sec. 71);

(*vii*) Pay interest out of capital during construction period (Sec. 107);

(*viii*) Appoint Inspector to investigate the affairs of the Company (Sec. 142); and

(*ix*) Wind up the Company without assigning any reason (Sec. 203 (2)).

C. By Prescribed Holding.

Shareholders holding *not less than one-tenth* of the issued capital may:—

(*i*) Requisition the directors to convene an extra-ordinary general meeting of the Company (Sec. 78);

(*ii*) When dissatisfied with he affairs of the company resolve to apply to the Local Government for the appointment of one or more inspectors to investigate its affairs and to report thereon after inspecting the company's

books and examining its officers (Secs. 138-141); and

(*iii*) Demand a poll (Sec. 79(c)).

D. Generally.

Generally.—

(*i*) Any five members present in person or by proxy at a general meeting or the chairman may demand a poll (Sec. 79)(c));

(*ii*) A member is entitled to get the dividends when the same is declared by the general meeting on the recommendation of the directors.

Supremacy of Majority

It is a cardinal rule of law, as applied to companies, that *prima facie* the majority of its members are entitled to exercise its powers and control its operations generally.

As a general rule, a resolution of a *majority* of shareholders voting at a meeting duly convened upon any question with which the company is legally competent to deal is binding upon *the minority,* and so upon the company.

Where a company in the matter of its internal management acts irregularly or not in complete accordance with its articles, the general rule that is followed in granting relief to those who complain of the irregularity is that the Court will not interfere at the instance of a minority to correct mere irregularities, the acts themselves not being *ultra vires.* This is known as the *Rule in Foss v. Harbottle* (1843), 2 Hare 461).

Under this rule, however, the supremacy of the majority of shareholders is subject to the following limitations:—

(1) Where the act complained of is *ultra vires* the company,

(2) Where it is a fraud on the minority.

(3) Where it is brought about by trick.

(4) Where it is inconsistent with the Articles.

(5) Where it is not clearly to the advantage of the company as a whole as distinct from some of its shareholders.

(6) Where there is an absolute necessity to waive the rule in order that there may be no denial of justice.

CHAPTER VIII

BORROWING POWERS.

1. Any trading, commercial or banking company may be taken to have an implied power to borrow money for the purpose of its business. But any other class of Companies cannot be said to have such power unless the same is given under its Memorandum and Articles (*Re Badger* (1905) 1 Ch. 568).

2. Generally a Company derives its borrowing powers from some provisions in the Memorandum, whereby the company may either be given a *limited power of borrowing and mortgaging up to a fixed amount, or to the amount of the issued capital, or the uncalled capital.* "An authority to borrow is, however, not properly an object of the company at all, and the Articles of Association can therefore be looked at for the purpose of explaining a power to borrow contained in the Memorandum" (*Southern Brazilian Railway Co.* (1905) 2 Ch. 78). The *mode of exercising such power is determined by the Articles.*

3. *Reserved Un-Called Capital*—The portion of the uncalled capital which a limited company has determined not to call up (i.e. reserved capital) except in connection with winding up, shall never be charged—(Sec. 69). Other uncalled capital may be charged, if the Memorandum and Articles authorise a company to do so.

The Power in the Memorandum to charge Company's assets will ordinarily cover a power to charge its uncalled capital.

4. If the Memorandum does not contain borrowing powers, it may be altered by a special resolution (subject to confirmation of the Court) under Section 12 of the Act and acquire such powers.

5. *Restrictions on Borrowing—*

(*a*) The borrowing powers cannot be exercised until the company is entitled to commence business, that is, until the minimum subscription has been subscribed and a duly verified declaration as to compliance with Section 103 (1) (a) (b), has been filed with the Registrar.

But a company will not be prevented from issuing simultaneous offer for subscription or allotment of any shares and debentures or from receiving any money payable on application for debentures (Sec. 103 (4)).

(b) A Company cannot be allowed to borrow more than the amount fixed by the Memorandum and Articles, and it cannot also be allowed to go beyond the provisions of its Memorandum and Articles in mortgaging or charging the assets of the company.

In computing the limit of the borrowing power, the overdraft taken by the company from its bankers will be taken into account.

6. *Modes of Borrowing—*

(*a*) By issuing bill of exchange, hundi or promissory note. These may be done on behalf of the company, by any person authorised by it in that behalf (Sec. 89). Such power must be given by the Memorandum.

(*b*) By mortgaging movable properties of the company.

(*c*) By mortgaging the immovable properties of the company.

(*d*) By mortgaging the book debts of the company.

(*e*) By mortgaging uncalled share capital.

(*f*) By creating a floating charge on the undertaking or property of the company.

(*g*) By issuing debentures and debenture-stock.

CHAPTER IX

REGISTRATION OF MORTGAGES & CHARGES, DEBENTURES ETC.

1. Under Section 109 prescribed particulars of the following mortgages or charges (accompanied by the instrument creating the mortgage or charge or a copy thereof verified in the prescribed manner) should be filed with the Registrar within 21 days after the date of creation of the charge:—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

(*d*) a mortgage or charge on any book debts of the company; or

(*e*) a mortgage or a charge, not being a pledge on any movable property of the company except stock-in-trade; or

(*f*) a floating charge on the undertaking or property of the company.

2. Similar registration of a property acquired (by the company) subject to an existing charge should be effected with the Registrar under Sec. 109A.

3. A copy of every instrument creating a mortgage or charge must be kept at the Registered Office of the company (Sec. 117).

4. Any person interested in mortgage or charge may apply to the Registrar of Joint Stock Companies for registering the said mortgage or charge and he shall be entitled to recover from the company any fees paid by him for such registration.

5. *Effect of Registration*—The Registrar on receipt of the prescribed particulars shall register the same in *his register* of mortgages and charges kept under Sec. 112 and return the instrument of charge or copy thereof (if a copy is filed) to the person who filed it. Then the Registrar will issue a Certificate of Registration of the mortgage or charge under Sec. 114 effect of which is that the document becomes valid and conclusive even though the Registrar subsequently makes any alteration of his own accord (*Imperial Bank of India* v. *Bengal National Bank,* 57 Cal. 328).

6. *Effect of non-registration*—If a mortgage or charge be not registered as aforesaid, the same shall be void against the liquidator or creditors of the company (Sec. 109)—(*Ram Narayan v. R. M. Chamaria,* 34 C. W. N. 557 (P. C.)).

The failure to register charges makes the company and its officers (which includes the *secretary*) liable to penalties under Sec. 122.

7. *Company's Register of Mortgages & its Inspection*:—

All mortgages and charges whatsoever created by a company (whether registerable or not) are required to be kept in a Register of Mortgages and Charges. The Register of mortgages as well as every instrument creating a mortgage or charge, must be kept at the registered office of the company (Sections 117 and 123). The same shall be open

at all reasonable times to the inspection of any creditor or member without any fee. Any other person can claim inspection of the Register of mortgages on payment of a fee not exceeding one Rupee for each inspection.

8. *Registrar's Register of Mortgages and Charges:—*

The Registrar also keeps a register of all mortgages and charges created by a company wherein the date of the creation, the particulars of the property charged and the names of the mortgagees etc., must be entered (Sec. 112). This is open to inspection of all persons on payment of a small fee.

9. *Statement of Mortgage in Annual Return—* The annual return to be submitted every year by a company to the Registrar, must, amongst other particulars contain, a statement of the amount of debt in respect of all mortgages and charges which are required to be registered under the provisions of the Companies Act (Sec. 32).

10. *Satisfaction of a mortgage:—*

When a debt for which a registered mortgage or charge was given is satisfied, the *company is bound* to give intimation of the same to the Registrar within 21 days of the date of payment or satisfaction (Sec. 121). And the Registrar shall thereupon, cause a notice to be served on the mortgagee, to show cause, within a time, not exceeding 14 days, why the payment or satisfaction should not be recorded. If no cause is shown the payment or satisfaction shall be recorded by the registrar, who may also give a copy of such entry to the company. If cause is shown, he shall make a note to that effect in the register and inform the company of the same.

DEBENTURES.

11. "Debenture signifies any instrument under seal, evidencing a deed, the essence of it being the admission of indebtedness" (Palmer).

12. A debenture may be created either by a mere promise to pay or by a promise secured by a mortgage or charge. Again the charge created by a debenture may be *either fixed or floating.* So far as redemption is concerned a debenture may be for a fixed term of years, or repayable on notice, or irredeemable or perpetual (Sec. 126).

A debenture to bearer is transferable like any ordinary negotiable instrument, but a debenture payable to the registered holder is not so transferable except to a person authorised by the holder.

13. *Issue of Debentures:* In executing and issuing debentures the rules and regulations laid down in the Memorandum and Articles must be strictly followed, but any irregularity which is not apparent on the face of it will not affect a *bona fide* holder of the same.

A company is not entitled to exercise its borrowing powers until the company is entitled to commence business. But it can make an offer for subscription of debentures and receive money on account of application for debentures notwithstanding such restriction (Sec. 103 (4)). Debentures may unlike shares, be issued at a discount when the Adticles allow it.

Specific performance of an agreement to give and to take debentures may be enforced against the company and the proposed holder respectively (Sec. 128).

14. *Registration of Debentures:* A mortgage or chaage created by a company for securing any issue of debentures or creating a floating charge etc., must be registered with the Registrar of Joint Stock Companies within 21 days of its creation giving the particulars of the mortgage and the amount of commission or discount paid, together with the instrument or a copy of the same duly verified (Sec. 109).

The above particulars must be stated under the following heads:

(a) Date of creation of the mortgage or debentures,

(b) Amount secured by them,

(c) Dates of resolutions creating debentures,

(d) Description of the property charged.

(e) names, addresses and descriptions of the mortgagees or the trustees for the debenture-holders (Cec. 110).

When there is more than one issue of a single Series of Debentures, particulars of each separate issue must be filed with the Registrar.

15. *Effect of Registration:* The debenture holders can claim priority over unsecured creditors when the debentures are registered before the commencement of winding up proceedings, but it they are registered after such proceedings they shall rank equally with the unsecured creditors. And the right of the debenture holders to priority will be lost, if a subsequent incumbrancer gets his instrument registered before the registration of the debentures.

16. A copy of the Registrar's Certificate of Registration must be endorsed on every Debenture and on every

Certificate of Debenture Stock issued, the payment of which is secured by the mortgage or charge so registered (Sec. 115).

17. A copy of one of the Debentures of a series or of any Debenture issued must be kept at the Registered Office of the company (Sec. 117).

18. *Effect of non-registration:* If any mortgage or charge created for securing any issue of debentures be not registered under the Companies Act, it will be void as against the liquidator and creditors of the company. But the liability of the company to pay the debt will not be affected thereby.

Failure to effect registration will make the company and its officers (which includes the *secretary*) liable to penalties under Sec. 122 and so also the default in endorsing a copy of the certificate of registration on every debenture issued.

19. The provisions of Sec. 121 as to intimation to the Registrar of the satisfaction of a mortgage or charge apply to Debentures also.

20. *Register of Debentures:*

(a) Every company should keep a register of debentures issued by it. And where a series of debentures are created the register shall contain:

(*i*) the total amount secured by the whole series.

(*ii*) the date of the resolution and the date of the deed.

(*iii*) general description of the property charged,

(*iv*) the names of the trustees, if any.

These details also must be furnished to the Registrar for registration (Sec. 110).

(b) Every registered holder of debentures is entitled to inspect register of holders of debentures at least for two hours daily. He shall also be entitled to get a copy of the same on payment of six annas for every one hundred words. Every holder may get a copy of the trust deed on payment of one rupee when it is printed, or on payment of six annas for every one hundred words when it is not printed (Sec. 125).

21. A commission for placing or guaranteeing the placing of debentures may be paid and Debentures may unlike shares, be issued at a discount.

22. Commission and/or Discount on Debentures—

(a) must be contained in the Annual List amongst other particulars (Sec. 32).

(b) must be stated in every balance sheet of the company until wholly written off (Sec. 106).

(c) And in registering mortgage or charge a statement as to the amount or rate per cent. of commission or discount paid in respect of debentures must be made along with the particulars of the mortgage or charge.

22A. Debentures are transferred by a Form of Transfer similar to that used in case of the Transfer of Shares.

23. *Re-issue of Debentures:*

(a) A Company is entitled to keep debentures alive for the purposes of re-issue even when the same have been redeemed subject to the following:—(Sec. 127 (1)).

(*i*) When the Articles of Association of the company expressly otherwise provide;

(*ii*) Where the conditions of the issue of the debentures otherwise provide; or

(*iii*) Where the debentures have been redeemed in pursuance of any obligation of the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns).

"That is to say, if the debentures are redeemed in pursuance of a general obligation to pay off so many per annum, or as part of an obligatory scheme for creating a sinking fund, they will not be re-issuable; but if paid off because the due date has arrived, or because having been called in, and the company has purported to keep them alive, the debentures may be re-issued; for in these latter cases the repayment is made in pursuance of 'an obligation enforceable only by the person to whom the redeemed debentures were issued, or his assigns'."

(b) The company can keep debentures alive by having the same transferred to a nominee, and in such a case the transfer from that nominee shall be regarded as a re-issue of the debentures—(Sec. 127 (2)).

(c) When a company intends to re-issue its redeemed debentures it must not pass a resolution of or enter, satisfaction or do anything from which it can be inferred that the debentures had been cancelled, for once the redeemed debentures are cancelled they cannot be re-issued.

FIXED AND FLOATING CHARGES.

24. The following points should be borne in mind:—

(a) A charge created by a Debenture may be either "fixed" or "floating".

(b) A *fixed charge* affects the title to the property as in the case of an ordinary mortgage, and the property can only be dealt with by the company subject to the charge.

(c) A *floating charge,* however, allows the property charged to be dealt with freely; it can be sold or disposed of by the company or used up in the business at any time before the charge attaches, and can be mortgaged so that the Mortgage has priority over the floating charge.

(d) Where property upon which a floating charge is created was acquired subject to an existing charge or by money advanced on the security of the property, these charges will also take priority over the floating charge.

(e) A floating charge does not specifically affect any item in the security until the happening of some event mentioned in the Debenture which causes it to become fixed or to "Crystallise" and allow the holders or trustees to take possession or appoint a Receiver.

(f) The Company may, if power so to do is contained in the Memorandum, even sell the whole of its undertaking without reference to any floating charge.

25. *Preferential Payment:* The debts which are entitled to preferential payment in case of winding up (Sec. 230) shall be paid in priority to any claim by the debenture-holders secured by a floating charge even when a receiver is appointed on their behalf or possession is taken by the trustees (Sec. 129). The following debts shall have such priority:—

(*i*) All revenue, taxes, cesses and rates;

(*ii*) All wages or salary of any clerk or servant in respect of service to the company for a maximum period of two months next before such date, not exceeding Rs. 1,000 for each;

(*iii*) All wages of any labourer or workman not exceeding Rs. 500 for each for similar period (Sec. 230).

CHAPTER X

CONTRACTS AND BILLS OF EXCHANGE

CONTRACTS.

1. Section 88 lays down that contracts on behalf of the Company may be made as follows (that is to say) :—

(*i*) any contract which, if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

2. *Execution of deeds:* Section 90 of the Act provides that "A Company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place *either in or outside British India;* and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the Company, and have the same effect as if it were under its common seal."

3. With regard to contracts by Companies the following must be borne in mind:

(*a*) A contract *untra vires* the company is wholly void and cannot be enforced or ratified.

(*b*) A contract not *ultra vires* the company, but *ultra vires* the directors, may be ratified by the shareholders.

(*c*) A contract made before the incorporation of a company, by some person professing to act in its behalf, cannot be ratified by the company after its incorporation. But there is nothing to prevent a company from entering into a new contract to carry into effect the terms of the pre-incorporation contract.

(*d*) A company cannot enter into a binding contract till it is entitled to commence business.

(*e*) *Interested Directors:—*

(*i*) *Disclosure of interest:* Sec. 91A lays down that every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company, shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined upon. If such interest is acquired subsequently, he must disclose the same at the first meeting of the directors held after the acquisition of his interest or the making of the contract or arrangement. A general notice, however, that a director is

a director or member of a specified company or a member of a specified firm, and is to be regarded interested in any subsequent transaction with such firm or company shall, as regards any such transaction, be sufficient disclosure within the meaning of this provision and after such general notice, it shall not be necessary to give special notice relating to any particular transaction with such firm or company.

(*ii*) *Voting:*—Section 91B provids that no director shall as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested nor shall his presence count for the purpose of forming a quorum at the time of any such vote; and if he does so vote his vote shall not be counted: Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(*f*) *Contract appointing a Manager or Managing Agents:*—Section 91C provides that where a company enters into a contract for the appointment of a manager or managing agent, in which any director is directly or indirectly concerned or interested or varies such contract, the company shall within 21 days of the contract or

any variation send an abstract of the terms of such contract or variation to each of its members together with a memorandum clearly indicating the nature of the interest of such director in such contract or variation. The contract shall, also, be kept open for inspection of members at the registered office of the company.

(*g*) *Contracts by agents in which company is undisclosed principal:*—Section 91D lays down that where a manager or other agent of a company enters into a contract on behalf of the company in which the company is an undisclosed principal, he shall at the time of entering into the contract make a memorandum in writing of the terms of the contract and specify therein the person with whom the same is entered into. The agent or manager shall forthwith deliver the said memorandum to the company "and send copies thereof to the directors" and the said memorandum shall be filed in the office of the company and shall be laid before the next meeting of the directors of the company.

But, *c* (*ii*) and (*g*) above do not apply to a Private Company other than the subsidiary of a public company.

Bills of Exchange.

4. "A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of the company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account

of, the company by any person acting under its authority, express or implied" (Section 89).

5. The following points should be borne in mind with regard to bills of exchange etc:—

(*a*) Bills of Exchange and Promissory Notes may only be accepted or given by a company if power so to do is contained in the Memorandum of Association or if the business of the company is of a nature as to make the use of bills essential.

(*b*) Directors purporting to make bills on behalf of a company in the absence of this authority will become personally liable to a *bona fide* holder.

(*c*) So long as the company has power to make bills of exchange they may be signed by any person authorised to sign by the company. Care must be exercised, however, by the Directors, Secretary or anyone given such authority not to use a form of signature either as drawer, acceptor or endorser which pledges their or his personal credit. For instance, "I, the Secretary of A. B. & Co., Limited, promise to pay," etc., and signed by the Secretary would make him personally liable, even though the company also executed the note.

(*d*) The Director or the Secretary whoever omits the word "Limited" from the name of the company upon any Bill of Exchange, Promissory Note, etc., will be personally liable if the company fails to pay the amount.

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CHAPTER XI

GENERAL MEETINGS.

1. There are three distinct classes of meetings of shareholders (called the general meetings), namely; (a) the statutory meeting; (b) the ordinary general meetings; and (c) the extraordinary general meetings.

Statutory Meeting

2. It is the first meeting of all the shareholders called for the express purpose of acquainting them practically with all that has been done since the incorporation of the company in divers matters in the manner prescribed under Section 77 of the Act. As stated in *Gardner v. Iredale* (1912) 1 Ch. 700, the object of the statutory meeting is to have before it a list of the shareholders of the company with names, descriptions, addresses, number of shares and to allow the shareholders an opportunity of discussing any matters relating to the formation of the company, and to enable them to ascertain the company's position.

3. *Procedure:* Such a meeting must be held by every limited company having a share capital (*except a private company*) within a period of not less than one month from the date of the commencement of business, and not more than six months of such date. The members present shall be at liberty to discuss any matter relating to the formation of the company or arising out of the Statutory Report.

4. *Statutory Report*—It is obligatory to circulate the statutory report to each shareholder and to file it with the Registrar, at least 21 days before the date of the statutory

meeting. The statutory report as certified by the directors must contain:—

(*i*) the total number of shares allotted;

(*ii*) the total amount of cash received;

(*iii*) an abstract of receipts and payments made upto a date within 7 days of the date of report;

(*iv*) names, addresses, descriptions of the directors, auditors, managing agents, etc.;

(*v*) particulars of modifications proposed in any contracts which are to be submitted for approval of the shareholders;

(*vi*) an account of the preliminary expenses of the company;

(*vii*) arrears, if any, on calls due by directors etc.,

(*viii*) particulars of any commission paid or to be paid, for sale of shares to the managing agents or the directors; and

(*ix*) the extent to which underwriting contracts, if any, have been carried out.

A list of names, etc. of the members of the company, and shares held by each shall be kept available for inspection by the shareholders and the members present shall be at liberty to discuss any matter relating to the formation of the company.

4A. The Court may, on application of a shareholder, order winding up of the company in case of default in holding the statutory meeting or filing the statutory report, after the expiry of 14 days of the last date on which the meeting ought to have been held.

Ordinary General Meetings

5. Every company must hold its first annual general meeting within 18 months from the date of its incorporation, and thereafter once at least in every calendar year, and at intervals of not more than 15 months. (Sec. 76). The Court has the power in case of default in holding such a meeting, on the application of any member, to direct the calling of a general meeting. In default every director or manager shall be liable to a fine.

6. The annual balance sheet, profit and loss account made upto a date within 9 months of the date of the meeting, along with the auditor's report are to be laid before the annual general meeting. Copies of these documents are to be sent to every shareholder at least 14 days before the meeting at which they will be laid. Copies of these documents are also to remain in the office open to inspection during office hours. (Sec. 131). The directors are to append a report on the working of the company containing their recommendation as to dividends, reserve fund, etc. (Sec. 131A). The Indian Companies Act is silent as to what other businesses are to be transacted at such meetings, but it appears from other provisions of the Act that the directors are to lay before such meetings a report regarding the affairs of the company. Sareholders may ask for further information and are entitled to discuss any matter.

7. *Proccdurc*—The procedure regarding the holding of general meetings is laid down in the articles. After the election of Chairman, the business commences, if sufficient number of members are present to form a *quorum*. Then the reports are introduced for discussion and acceptance by the members. If the members are dissatisfied they may oppose the motion for acceptance of the reports. The other

matters that are usually transacted are, the declaration of dividend, fiilling up of vacancies caused by retirement of directors, and election of auditors.

7A. Three copies of the balance-sheet (signed by the manager or secretary of the company) together with the annual list of members and summary of prescribed particulars regarding capital, must be filed with the Registrar within 21 days of the meeting (Sections 134 and 32).

When the general meeting does not adopt the balance-sheet, a statement of that fact together with the reasons therefor, shall be annexed to the balance-sheet, and to the copy thereof, which is to be filed with the Registrar (Sec. 134 (2)). The Registrar may also call for further information or explanation regarding the same (Sec. 137).

Extraordinary General Meetings

8. Extraordinary General Meetings are meetings of the shareholders other than the Statutory meeting or the Ordinary general meetings. They are held for the purpose of dealing with extraordinary matters outside the usual business of the company, and they may be called by the directors in accordance with the Articles or on *requisition of the members* or they may be called by the shareholders themselves if the directors fail to convene.

It is only in an extraordinary general meeting that any important matters or changes required by the Act to be done by a company, are transacted. An extraordinary or special resolution can only be passed in an extraordinary general meeting.

9. The power of requisition is one of the few rights left to shareholders by which they may exercise some control over the board. Sec. 78 provides that on the requisition of the holders of not less than one-tenth of the issued

share capital of the company, the directors must proceed to call an extraordinary general meeting. The requisition must state the object of the meeting, and be signed by the requisitionists, and deposited at the registered office of the company.

The secretary should make a note of the names and addresses of the persons who personally deposit the requisition.

If the directors do not call a meeting within 21 days from the date of such deposit of requisition, the requisitionists or a majority of them in value, may themselves convene the meeting within three months from the date of the deposit of the requisition.

9A. The meeting held on the requisition of members for holding an extra-ordinary meeting cannot be said to be the annual general meeting under Section 76 (*Nasoor-Bhai-Abdulla Bhai* v. *Emperor,* 25 Bom. L.R. 224).

General Procedure at General Meetings

10. *Who may call meetings*:—

(1) Unless articles provide otherwise two or more members holding not less than one-tenth of the paid up share capital are competent to call a meeting (Sec. 79 (2)).

(2) The Court is also empowered to call a meeting on its own initiative or on the application of any director or any member entitled to vote, when it is otherwise impracticable to call a meeting. (Sec. 79 (3)).

11. *Notice*:—

(*a*) Every member should be given notice of a meeting by at least 14 days before the holding

thereof. But the period may be reduced with the consent of all the members entitled to such notice (Sec. 79).

(*b*) Where, however, a special resolution is intended to be moved, the period of notice is to be 21 days except where all the members entitled to attend and vote agree otherwise in which case the meeting may be called and held at shorter notice (Sec. 81).

(*c*) A notice may be served either personally or through post. (Clauses 112-116, Table A).

(*d*) The notice must state the object of the meeting. When any special business is to be transacted at a meeting the notice must specify it. (*Tiessen v. Henderson,* (1899) 1 Ch. 861).

(*e*) A notice must be intelligible to the ordinary shareholder.

(*f*) Accidental omission to give notice or non-receipt of notice shall not invalidate the proceedings of a meeting (Sec. 79).

12. *Quorum*:—

(*a*) No business in a meeting can be transacted without the existence of a quorum, which is "the fixed number of members of any body whose presence is necessary for the proper and valid transaction of business."

(*b*) The quorum, is, if not provided by the articles, fixed by the Indian Companies Act (Sec. 79 (2) (b)) in the case of public companies at *five* and in private companies at *two*. But the members must be personally present.

(*c*) Resolutions passed at a meeting where there is no quorum are absolutely void.

13. *Voting*:—

(*a*) Every member whose name appears in the register of members has a right to vote. He may exercise the right for his own interest, even against the company's interest. The number of votes allotted to each member in the absence of any provisions in the articles, is one. If deprived of his right a member can seek the protection of the Court.

(*b*) All questions must be decided by a show of hands unless a poll is demanded by the requisite number of shareholders (Clause 56 "Table A").

14. *Proxy*:—

(*a*) A proxy is a written instrument by which a person is authorized to vote on behalf of a shareholder. The person so appointed must be a member.

(*b*) The instrument must be signed by the appointer or by his attorney, and must be deposited at the registered office of the company not less than 72 hours before the time fixed for the meeting (Sec. 79 (2)).

(*c*) An unstamped proxy is invalid. (*In re Tata Iron & Steel Co., Ltd.*, (1928) 30 Bom. L.R. 197).

15. *Poll*:—

(*a*) When a member present at a meeting thinks that the voting by show of hands on a resolution

would be unsatisfactory and should not be allowed, a poll may be demanded.

(*b*) A poll must be demanded by at least five members or by the chairman or by any member holding not less than one-tenth of the issued capital, immediately before or after the declaration of the result by the chairman.

(*c*) On a poll the absent members may also vote through their proxies along with those present (Sec. 79).

(*d*) There can be no vaild demand for a poll unless there has been a valid show of hands. A show of hands is the constitutional method of declaring the will of a meeting. It stands as the resolution of the meeting, unless the declaration of the chairman that the proposed resolution is thereby carried or lost is subsquently displaced by the result of a poll duly demanded and taken.

(*e*) When two resolutions before a meeting have been separately voted upon and a poll has been demanled, a separate poll must be directed to be taken on each resolution.

16. *Chairman*:—

(*i*) A Chairman is the person who is appointed or elected to preside over a meeting, to conduct its proceedings, and who occupies the chair or seat provided for this function.

(*ii*) The Chairman of the general meeting is usually the Chairman of the board of directors, but not necessarily so. It must not be

imagined that Chairmanship of Board carries with it a right to the chair of the shareholders' meetings.

(*iii*) It is the articles that usually provide that the Chairman of the board shall take the chair at the general meetings and in that case he takes charge of the meeting as a matter of course. If the Articles are silent then the Act allows the election by the members of any person to preside over their own meeting.

(*a*) Amongst others, the following *powers of the chairman* may be particularly noted. intention of carrying on the business of the meeting smoothly and expeditiously:—

(*a*) Amongst others, the following *powers of the chairman* may be particularly noted. He is to regulate the speaking on a certain point, and to *decide points of order.* A share-holder is not entitled to question the propriety of the chairman's ruling. But proceedings may be declared invalid by a Court when it is found that the chairman's ruling on a certain matter was wrong (*Catesby v. Burnett* (1916) 2 Ch. 324).

(*b*) Any resolution or amendment which is proposed in the meeting must strictly conform to the provisions in the Articles, and must be relevant for the purpose of the meeting as given in the notice.

(c) The declaration by the Chairman as to the result of voting that a resolution is carried unanimously, or by a particular majority, or lost, is conclusive (Table A Cl. 56, Section 81 (3)).

(d) The Chairman may close the meeting by *adjourning* the same, when he is unable to maintain order owing to persistent clamour by a certain section of the members. He may also adjourn a meeting on any other ground with the consent of the members present (Table A, Cl. 55), and shall so adjourn if directed by the meeting. But when a poll is demanded on a question of adjournment, it shall be taken forthwith (Table A, Cl. 59).

(e) He should give the minority an opportunity of being heard, even when the majority is determined to carry a resolution without hearing the arguments of the minority in opposition, and then apply the closure with the consent of the meeting.

(f) The Chairman has a second or *casting vote* in the case of an equality of votes (Table A, Cl. 58).

(g) He has the right to receive or reject proxies and his decision is final, until it is established in a Court of law to be wrong.

Secretary's Duty Regarding General Meetings:

The Secretary is to see that the notice of a general meeting is duly posted, or served, on every member who is entitled to be present and vote at that meeting. He should

be particularly careful regarding the despatch of the notice according to the provisions of the Articles. If any special business is to be transacted at that meeting, the same must be clearly stated in that notice.

He must be present before the time appointed for the meeting and must keep ready with him, amongst other data, the following books and documents:—

1. The Register of Members.
2. The Minute Book of General Meetings.
3. A copy of the Articles of Association.
4. Balance Sheet and Profit and Loss Account.
5. Directors' Report.
6. Auditors' Report.
7. Duplicate copies of each motion for the use of the proposer and seconder.
8. Other books of reference which may be necessary for the purpose of the meeting.
9. In case of statutory meeting, a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them must be kept on the table for the inspection of the members (Sec. 77 (6)).

Before the meeting is actually held, he should arrange for collecting the signatures of the members present, or when admission cards are issued, to have them collected from the members present.

In order that the business of the meeting may be promptly and regularly done, it is desirable that arrangements should be made with particular members for pro-

posing and seconding the resolutions, which are more or less of formal character.

Before the actual business of the meeting is proceeded with, he must ascertain that a *quorum* of members is present. If no quorum is obtained the meeting is either to be dissolved or adjourned as provided by the Articles (Table A, Cl. 52). If the quorum is present it shall proceed with the business of the meeting.

After the election of the chairman the secretary will have to read the notice convening the meeting, and the minutes of the last preceding meeting, when called upon by the Chairman, to do so. In the case of an annual general meeting the auditors' report, balance sheet, accounts and directors' report have to be read.

When the minutes of the last preceding meeting are approved, he is to get the chairman's signature to the same. He must previously prepare the agenda (*a statement of the heads of the business which is to be transacted at the meeting*) and place the same before the chairman.

The secretary must keep a careful record of what takes place, and note the name of proposer and seconder of each and every resolution, for *it is his duty*, to record the proceedings of the meeting in the regular minute book after the meeting is over.

It is the duty of the Secretary to ascertain before hand that the *proxy forms* sent in by the members are properly stamped and attested, and have been deposited within the prescribed time, and that a shareholder who has appointed a proxy is entitled to vote, and that his proxy is a qualified person. He is to report any irregularity with reference to the same to the chairman.

The secretary shall preserve all proxy papers by pasting them in a book with a proper index.

RESOLUTIONS

1. A proposal put before a meeting for adoption is known as a 'motion' and when it has been adopted by the meeting (with or without amendment) it is called a *'resolution.'*

2. *Kinds of Resolutions:*—The resolutions are of three kinds:—

(a) *An Ordinary Resolution* is one which is passed by a bare majority of those present and voting personally or by proxy at any of the Ordinary General meetings of which 14 days' notice has been given. An ordinary resolution will be valid in spite of irregularities if it is passed at a meeting in which all the members of the company are present and vote for it. (*Parker & Cooper Ltd. v. Reading* (1926) 1 Ch. 975).

(b) *An Extraordinary Resolution* is one which has been passed by a majority of not less than three-fourths of members entitled to vote and present in person or by proxy (where proxies are allowed) at a general meeting of which 14 days' notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(c) *A Special Resolution* is one which is passed by a majority as required in case of an extra-ordinary resolution, at a general meeting of which not less than 21 days' notice specifying

the intention to propose the resolution as a special resolution has been duly given.

3. (i) *Business:*—The business usually transacted by means of an *Ordinary Resolution is*—

(a) Adopting the Statutory Report (Section 77).

(b) Adopting the Balance Sheet and Accounts at the Annual General Meeting (Section 131).

(c) Appointing Directors (Section 83 B).

(d) Electing Auditors and fixing their remuneration (Section 144).

(e) Declaring Dividends and sanctioning sums to be carried to Reserve (Clause 95 Table A).

(f) Permitting a director or his firm to hold an office of profit (Section 86 E).

(g) Appointing a director in place of one removed (Section 86 G).

(h) Appointing or removing the managing agent, or varying the contract of management (Section 87 B).

(i) Authorising issue of Shares at a discount (Section 105 A).

(j) Agreeing to sell or dispose of the undertaking of the company, or to remit any debt due by a director (Section 86 H).

(k) Authorising representatives to inspect the books of a subsidiary company (Section 132 A (5)).

(ii) The *following business* would require an *Extra-ordinary Resolution*—

(a) Removal of a Director (Section 86 G).

(b) Winding up a company, when it cannot by reason of its liabilities continue its business (Section 203 (3)).

(c) Disposing the books and documents of the company in a voluntary winding up (Section 242).

(iii) The following *business* would invariably require a *Special Resolution:*—

(a) Altering or adding to the Company's Articles of Association (Sec. 20).

(b) Altering the name of the company (Sec. 11).

(c) Re-organizing the Share Capital (Sec. 54).

(d) Reducing the Share Capital (Sec. 55).

(e) Sanctioning additional remuneration to Managing Agents (Sec. 87 C (2)).

(f) Sanctioning payment of Interest out of Capital during construction (Sec. 107).

(g) Appointment of inspectors to investigate the company's affairs (Sec. 142).

(h) Winding up the company without assigning any reason (Sec. 203 (2)).

CHAPTER XII

MEETINGS OF DIRECTORS

1. Directors' meetings are commonly called Board meetings.

2. Directors must usually *act as a board in meeting assembled*. When articles provide that a letter or resolution, by circulation or otherwise, signed by all or a majority of the directors shall have the same effect as a resolution of a duly convened and constituted board meeting, such a provision is valid. And where all the directors agree to a particular course it is not absolutely necessary for them to meet.

3. *Requisites of a Valid Board Meeting*—To constitute a valid meeting of the board the following conditions must be fulfilled:—

(*i*) Proper notice should be given of the board meeting;

(*ii*) a proper quorum should be present;

(*iii*) quorum should be of disinterested directors; and

(*iv*) a proper person must be in the chair.

4. *Notice.*—

(*a*) Notice of the meeting of directors must be given to all the directors who are within summonable distance, and they cannot waive their right to such notice.

(*b*) Notice need not be given to a director who is abroad and out of reach, unless the articles expressly require this.

(*c*) In law a meeting of directors is not duly convened unless due notice has been given to all the directors (*H. M. Ebrahim Sait v. South India Industrial Ltd.* (1938) Mad. 962). And in *re: the Peninsular Life Assurance Co., Ltd.*, (1936) 37 Bom. L. R. 904, 160 I. C. 638, it was decided that "*prima facie*, due notice must be given convening a meeting of the directors and, in default, the meeting is irregular."

(*d*) A notice may not be necessary when the articles provide that the meetings are to be held regularly at fixed times.

(*e*) A director may requisition a meeting at any time. (Clause 87, Table A).

(*f*) *Length of Notice:*—

(*i*) Reasonable notice must be given of the meeting unless the articles otherwise provide.

(*ii*) The notice must be reasonably long and a reasonable length for a notice will, to a considerable extent, be determined by the practice that has prevailed in each particular company. In the absence of regulations as to length of notice, a reasonable time between notice and meeting is necessary.

(*iii*) A board meeting if summoned on short notice will be invalid if the Court is of opinion that it was so summoned with a view to excluding certain directors and the Court will always interfere to prevent directors excluding a co-director.

5. *Business.*—

(*i*) It has been *held* in India that it is not necessary to state in the notice convening the meeting of the directors what business is to be transacted thereat (*Rama Ayyer v. Shiva Jnanam Pillai* 51 Mad. 68).

(*ii*) The directors may inspite of the agenda take up the business in any order they think proper. The chairman should, however, have good reason for departing from the agreed order of business, for a director unable to be present at the beginning of the meeting but wishing to take part and record his vote on a certain item on the agenda may find that this particular matter has been disposed of before his arrival.

6. *Quorum.*—

(*a*) The articles will usually fix the quorum of directors i.e., the minimum number of directors requisite to form a properly constituted meeting.

(*b*) If the articles, do not prescribe the quorum, a majority of the whole number of directors must be present to constitute and act as a board, but apparently not a smaller number. Table A (Clause 88) prescribes *three* as the quorum."

(*c*) Where there is a quorum at the beginning of a meeting, but some of the directors leave the meeting, resulting in a number less than the quorum, it is probable that any subsequent acts

would be invalid unless the articles provided otherwise for such a contingency.

(*d*) The presence of a quorum does not prevent lawfully appointed directors from attending, or allow a portion of the board to exclude the others.

(*e*) When the number of directors falls below the minimum number fixed by the Articles, they cannot act unless the Articles entitle the remaining directors to act in such a case.

(*f*) Where the articles provide that the quorum may be fixed by the directors, an outsider is entitled to assume that the directors have acted with a proper quorum (*Cox v. Dublin City Distillery* (1915) I. I. R. 345).

(*g*) The quorum must not be a quorum of persons not entitled to vote e.g. directors who are interested in the matter under discussion. The irregularity will not be removed by spilting the business or resolution and, each director voting only on the part affecting the other. A reasolution reducing the quorum for the purpose of enabling those not interested to pass the resolution is invalid (*North Eastern Insurance Co.* (1919) 1 Ch. 198; *In re Sir Hormusji A. Wadia* (1921) 23 Bom. L. R. 110).

Voting —

1) Generally speaking every director has one vote at a board meeting and any question arising

therein is decided by a majority of votes, unless the Articles otherwise provide.

(*b*) The Articles usually invest the Chairman with a second or casting vote, but unless the articles do contain this provision, the chairman has no casting vote.

(c) Section 91B of the Act (*inter alia*) provides that:—

(*i*) no director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interestel;

(*ii*) if he does so vote, his vote shall not be counted:

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of being or becoming sureties for the company.

This section shall not apply to private companies provided that where a private company is a subsidiary of a public company, it shall apply to all contracts or arrangements made on behalf of the subsidiary with any person other than the holding company.

(*d*) A director is entitled to attend a board meeting even when he is disqualified from voting.

8. *Chairman.*—

(*a*) The Articles will either name the chairman or provide that the Directors may elect a chairman and determine the period for which he is to hold office. If no such chairman is elected, or he is absent from the meeting, the

directors will choose one of their number to be chairman of the meeting.

(*b*) "Unquestionably it is the duty of the chairman and it is his function to preserve order and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting."

9. *Attendance Book:*—It is important that a careful record of the attendances of directors at board meetings be kept in order to fix responsibility for acts done at the meeting.

During the meeting this book is passed round the table for each director, in turn, to sign his name. The secretary should make a point to see that each director has signed. Gentlemen attending a meeting in a representative capacity should also be invited to sign this book, adding the name of the firm or company they represent and the relation of the firm or company to the company.

The book should be signed well in advance of the actual proceeding with the business of the meeting as a director may leave before the conclusion of the business, and, unless he has previously signed the attendance book, there may be no formal evidence of his presence.

10. *Minutes.*—

(*a*) *Form of Minutes:*—"Directors ought to place on record, either in formal minutes (*resolutions*) or otherwise, the purport and effect of their deliberations and conclusions; and if they

do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right."

(*b*) A director who votes in favour of confirming the minutes does not thereby become responsible for an act done at the previous meeting at which he was not present, the act being one that was complete before the confirmation of the minutes.

(*c*) The onus lies heavily to show their incorrectness on the party alleging fraud or insufficient cause for the entries having been made (*Punjab Industrial Bank Ltd., v. Byramji Hormasji*, (1935) Lah. 157).

(*d*) The directors' minute book is not open to the inspection of the shareholders; and where there is a provision in the articles entitling the shareholders to inspect the books recording the proceedings of the company, this will not entitle them to inspect the minutes of the proceedings of the directors.

(*e*) The minutes of a board meeting, when signed by the chairman, are *prima facie* evidence of their correctness; but they are *not conclusive evidence*, and can be rebutted.

11. *Irregular Meetings.*—

(*a*) A meeting would be irregular:—

(*i*) if proper notice convening the same has not been given;

(*ii*) if proper quorum entitled to vote (excluding directors interested in the business) is not present; and

(*iii*) if the proper person is not in the chair.

(*b*) Resolutions passed at an irregular meeting are invalid, but commonly it is open to a subsequent regular board meeting to ratify what has been done by an irregular board.

12. *Conduct of Meeting and Secretary's Duty.*—The best way to ensure the proper conduct of a board meeting is to make satisfactory and adequate provision for its requirements before the meeting assembles. The conduct of a board meeting is chiefly in the hands of the chairman, with the active assistance of the secretary. Much of the work of the secretary is done before the meeting takes place, in consultation and with the advice of the chairman.

Assuming the proper notices having been served the Secretary should take the necessary instructions as to the preliminary drafting of resolutions to be proposed, the preparation of statistics and accounts, and other matters which will form the basis of the deliberations of the meeting. Copies of these documents should be available at the meeting for all the directors and officers. In consultation with the chairman, the agenda should be prepared and copies kept ready before the meeting.

It is, of course, important that the convening and conduct of the meeting are in strict accordance with the articles. The board room should be properly prepared with a supply of necessary stationery and other requisites of a serviceable character; copies of all documents likely to be referred to should be on the table for each director or officer; and some

attention paid to ventilation which may keep the meeting in a cool and collected frame of mind.

All arrangements should be completed at least fifteen minutes (when also the chairman should be present) before the appointed time of the meeting. The secretary should consult with the chairman on any urgent matters that should be dealt with at the meeting.

At the appointed time, the chair is taken by the chairman of the directors, or, in his absence, the vice-chairman or other director, as regulated by the articles.

The first business is to see that the prescribed quorum of directors who are entitled to vote and transact business at the meeting is present; and that a record of the attendance of the members of the board is made, in order to fix responsibility for acts done at the meeting.

Usually an attendance book is provided, which every member signs as he enters the room; but it is desirable that the secretary should keep an independent record of such attendances in case of accidental omission to sign on the part of a director.

In the absence of the proper quorum, the meeting must be adjourned.

Provided the requisite number of directors is present, the meeting proceeds, and the items of business are, unless otherwise agreed at the commencement of the meeting, taken in the order in which they stand on the agenda paper.

The secretary may or may not read the notice convening the meeting, depending upon the practice usually followed.

The minutes of the previous meeting should be read; or, if copies thereof have been previously circulated to the directors, taken as read and noted as correct, on the authority of the meeting. The chairman signs the minute book with his name and date of signing, and such minutes are thereafter to be taken *prima facie* as correct.

Any question as to accuracy may be dealt with by amendment to the motion that the minutes are a true and accurate record of the proceedings of the last meeting of the directors. Discussion may follow, but it must not travel outside the question of accuracy of the record, and should of necessity be confined—as also the voting thereon—to those who were present at the meeting of which the proceedings were minuted. As to voting powers in general, each director has one vote, and the chairman is usually given by the articles a second or casting-vote.

These preliminaries usual to all board meetings being completed, the business following will depend largely on the nature and importance of the company. It is not uncommon for important correspondence to be then read and dealt with, followed by the consideration of the company's financial matters and the reports of any committees of the board. Other usual business would include such formal routine work as the making of calls, allotment of shares, etc.

Necessarily, in companies of great importance most of the detailed work is left entirely to the officers, whose acts should be formally ratified by the board, where no express authority to delegate the power of the board to them is confine their attention to formulating their general policy given in the articles. In such companies, the directors

and other matters which require their own approval (e.g., allotment, calls, etc.), though these latter may, where power exists, be delegated to committees of the board.

In other companies, where the area of operations is limited or of less importance, the directors take a more active interest in the minutiæ of the company's business (e.g., examining accounts). *Discussion is usually informal and conversational,* and the directors do not rise to address the chairman. Motions are not always formally put to the meeting, if the meeting is apparently unanimous, though in case of marked difference of opinion it is desirable to have a formal voting.

Committee Meetings

13. The maxim *"delegatus non posted delegare"* applies to directors, and, accordingly, the articles must expressly provide that the board may delegate any powers to committees. Otherwise the directors cannot delegate any of their duties and powers to a committee.

14. There is nothing in the articles to prevent the appointment of a committee of one. It is very unusual, but still it may be done. A committee means a person or persons to whom powers are committed which would otherwise be exercised by another body.

15. Notwithstanding that a matter has been delegated to a committee, the directors are not precluded from dealing with the matter.

16. Usually a committee has no plenary power, its work being confined to investigation, consideration, and recommendation to the board of directors, who may or may not adopt the views of their committee. It is desirable in

the appointment of a committee that its powers and authority, be clearly stated.

17. *Prima facie,* a committee cannot appoint a quorum, or subdelegate or act unless all the members are present, hence it is desirable in delegating powers to a committee either to fix a quorum or to give them power to fix a quorum.

18. All members of the committee must receive due and adequate notice of its meetings, otherwise its proceedings will be invalid.

19. *Proceedings.*—

(*i*) The company's regulations will usually provide that the rules governing board meetings and proceedings of directors shall apply also to committee meetings.

(*ii*) Directors' committee meetings are usually less formal than other meetings of the board. These latter, too, are generally characterised by a minimum of formality, especially if the number comprising the board is small. Members of board meetings, including committees thereof, do not usually rise to address the chairman, there is little debate, but rather discussion in a conversational style, sometimes interspersed by running commentary. Motions, too, are not always seconded, but merely put to the meeting and a vote taken thereon, either by a show of hands or in any other way which indicates the opinion of the members.

CHAPTER XIII

AGENDA AND MINUTES.

1. It is a statutory obligation upon every company to keep two books, namely, a minute book of the proceedings of the board meetings and a minute book of the proceedings of general meetings (Sec. 83).

The Secretary should attend all such meetings and take careful notes of the proceedings, and from his own and the Chairman's notes should write up the Minutes.

2. Once signed the Minutes should never be altered either by erasure or interlineation or otherwise. Any desired alteration should be effected by Resolution at the next Meeting. It is improper to remove a leaf from a Minute Book. Should a page require rewriting a line should be drawn through what has been written and the leaf left intact. Minutes are frequently required to be produced in legal proceedings, and obviously any evidence of mutilation would give grounds for suspicion.

The following observations of Lord Esher should be borne in mind *"I trust I shall never again see or hear of the Secretary of a company, whether under superior directions or otherwise, altering minutes of meetings either by striking out anything or adding anything."*

3. The Minutes if purporting to be signed by the Chairman of the Meeting to which they relate or by the Chairman of the next succeeding meeting are *prima facie* evidence of the proceedings. Until proved to the contrary every General or Board Meeting of which Minutes have been so made and signed is deemed to have been duly held

and convened, and all proceedings at such meeting duly carried out, and all appointments made are to be deemed to be valid (Sec. 83). The absence of any reference in the Minutes to a certain matter is treated as evidence that it was not brought before the Meeting.

4. The usual procedure is for the Secretary to prepare the Agenda (*a statement of the heads of the business to be transacted at the meeting*) for the use of the Chairman who brings the various items of business before the Meeting for consideration and decision. It is desirable to use for the Agenda a Special book called the Agenda Book, but frequently the Agenda is made out on separate sheets of paper for each Meeting. Whether book or sheets of paper are used either should be ruled down the centre of each page so that the Agenda, item by item, is set down on the left-hand side leaving the right-hand for the Chairman to write in his own remarks against the items as the meeting goes forward.

5. The Secretary also takes his notes of the proceedings and from these and the notes of the Chairman on the Agenda, he can draft the Minutes and enter them up in the Minute Book.

6. At the next General or Board Meeting as the case may be the entries are read over by the Secretary. The Chairman then puts them to the vote of the Meeting and if approved appends his signature. Any slight alteration not amounting to a modification or rescission of a Resolution can be made by him and initialled. The first minute of this meeting should be one to the effect that the Minutes of the last preceding Meeting (of directors or shareholders) *"were read and signed as correct."*

7. The Directors' Minute Book is not open to the inspection of any shareholders and should not be made accessible to any but the Directors, Secretary and Auditors.

8. Section 83 (4 & 5) provide that the books containing the minutes of proceedings of any general meeting of a company held after 15th January, 1937, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that *not less than two hours in each day* be allowed for inspection) be open to the inspection of any member without charge and further that any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes at a charge not exceeding six annas for every hundred words.

9. *Secretary's Duties in Keeping Minute Books:*—It is his duty to have the minutes of all proceedings of general meetings of the company, and of the meetings of directors, recorded in two separate books kept for the purpose. The minutes to be recorded by him in the minute book should contain a full and accurate record of the business done in the meeting. It should contain the names of persons present at the meeting, and the names of proposers and seconders of motions and amendments. The resolutions and decisions upon any point shall be briefly recorded in the order in which they actually took place in the meeting.

CHAPTER XIV

BOOKS, ACCOUNTS & AUDITORS

1. Section 130 of the Act lays down that every company must keep proper books of accounts with respect to:—

(*a*) its receipts and expenses and the matters to which they relate;

(*b*) its sales and purchases of goods; and

(*c*) its assets and liabilities.

2. The books of Accounts must be kept either at the Registered Office or such other place as the Directors determine.

3. The Books must be open to the inspection of Directors (during business hours), who are each under an obligation to take reasonable steps to see that requirements of Section 130 are carried out.

Annual Accounts

4. The provisions of the Act regarding preparation, audit, circulation and inspection of annual accounts of the working of companies incorparated under the Act are *summarised* in the following few paras:—

A. *Balance-Sheet and Profit & Loss Account:* The directors of every company *must* within 18 months from the date of incorporation, and subsequently once a year *lay before the company* in a general meeting the balance sheet of the company and the profit and loss account. These statements are to be made up to a date

not more than nine months previous to the date of the meeting (Sec. 131).

B. *Contents of Annual Accounts:* 1. (*a*) The BALANCE-SHEET should contain a summary of the property and assets of the company, the capital and liabilities and should disclose the general nature of those liabilities and assets and how the value of fixed assets has been arrived at. It should be in the "form" marked 'F' in the Third Schedule to the Act or as near thereto as circumstances admit. (Sec. 132 (1) (2)). The balance sheet of a holding company must include particules as to subsidiary companies (Sec. 132A).

(*b*) The Balance-sheet must also show separately:

(*i*) the preliminary expenses until wholly written off;

(*ii*) the expenses of any issue of shares or debentures until wholly written off;

(*iii*) Commissions on shares or debentures or discount on debentures until wholly written off (Sec. 106);

(*iv*) Discounts on shares, if any, until wholly written off (Secs. 105A(2));

(*v*) The number and amount of redeemable preference shares and the date on which they can be redeemed (Sec. 105B(2)); and

(*vi*) Shares in and loans to "Subsidiary companies (Sec. 132A).

2. (*a*) Under clause 107 of Table A which is compulsorily applicable to all companies, the PROFIT & LOSS ACCOUNT shall show arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived and the amount of gross expediture distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(*b*) The Profit and loss Account shall include particulars showing the total amount of money paid away to the managing agents and directors as remuneration and commission etc., and the total amount written off for depreciation (Sec. 132 (3)).

C. *Annual Accounts to be Audited*: The balance-sheet and profit and loss account must be audited by an auditor and his report must be submitted along with other documents and it is to be read before the general meeting of the

company. Copies of such papers are to be sent to every shareholder at his registered address, at least 14 days before the meeting (Sec. 131 (2)(3)).

D. *Authentication of Annual Accounts:* The balance-sheet and the profit and loss account or incoming and expenditure account are to be authenticated (signed) in case of banking companies by manager or managing agent, and where there are more than three directors at least by three, and where there are less than three, by all; and in case of other companies by two directors, and when there are less then two, by the sole director and the manager or the managing agent (Sec. 133).

E. *Directors' Report:* The Directors are to make and attach a report with regard to the affairs of the company which should contain among other things the dividend recommended, the amount carried on to the reserves etc., (Sec. 131A). The Directors' Report may be signed by the Chairman of the Board on behalf of the directors if so authorised by them.

F. *Annual Accounts to be sent to Shareholders:* Every company *other than a private company* shall send a copy of such balance-sheet and Profit and Loss Account or income and expenditure account so audited together with a copy of the auditors' report, to the registered address of every member of the company at least fourteen days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the

registered office of the company for the inspection of the members of the company during a period of at least fourteen days before that meeting (Sec. 131 (3)).

G. *Copies to be filed with Registrar:* Under Section 134, after the Balance Sheet and Profit and Loss Account have been laid before the company at the general meeting three copies of the balance-sheet signed by the Manager or Secretary of the Company shall be filed with the Registrar together with a copy of the Annual List and Summary.

If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

H. *Copies of Balance-sheet and Auditors' Report:* Any member of a company shall be entitled to be furnished with copies of the Balance-Sheet and the Profit and Loss Account and the auditor's report at a charge not exceeding six annas per hundred words (Section 135). Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheet of the company and the reports of auditors and other reports as is possessed by holders of ordinary shares of the company (Section 146). Trustees to debenture-holders have the right to

receive and inspect balance sheets, profit and loss account and reports of the auditors.

5. *Statutory Books:* A number of Statutory Books and forms are required to be maintained by the company under various sections of the Act, which it will be the duty of the secretary to keep or cause to be kept under his direct supervision. For a complete list of these *see* PART III.

AUDITORS

6. The first auditors of the company (to hold office upto the first annual general meeting) can be appointed by the Directors before the statutory meeting but subject to the power of the company in general meeting to remove them (Section 144(7)).

7. *Thereafter,* auditors are to be appointed at the annual general meeting of the company in each year; if not, the Local Government may appoint on the application of any shareholder (Sec. 144 (3) (4)-.

8. The directors can fill any casual vacancy occuring in the office of auditor (Sec. 144 (8)).

9. No person other than a retiring auditor can be appointed unless a shareholder has given notice to the company 14 days before the annual general meeting of his intention to *propose a new auditor or auditors.* In such an event the company should immediately proceed to intimate to the shareholders of such a proposed nomination (Sec. 144 (6)).

10. The following persons cannot be appointed auditors:—

(*i*) a director or officer of the company;

(*ii*) a partner of such director or officer;

(*iii*) in the case of a company other than a private company, not being the subsidiary company of a public company any person in the employment of such director or officer; and

(*iv*) any person indebted to the company shall not be appointed auditor of the company and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated; and

11. The *remuneration* of the auditors is fixed by the general meeting which appoints them and is paid by the Company. But the remuneration of first auditors of the Company appointed before the statutory meeting and of those appointed to fill a casual vacancy, by the Directors, is fixed by the Directors and of those appointed by the Local Government is fixed by the Local Government.

12. The Auditors are entitled *to have access* at all time to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of their duties.

In case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

It is, therefore, the duty of the Secretary to produce to the Auditors, whenever required by them all books and accounts, vouchers and documents, and to furnish all such

information within his power as may be needed to enable them to carry out their audit.

13. Auditor *shall be entitled* to receive notice of and to *attend any general meeting* of the company at which any accounts which have been examined or reported on by them be laid before the company and may make any statement or explanation they desire with respect to the accounts.

14. There is no provision in the Act for the removal of an auditor once appointed, but "the Court will not force on an unwilling company auditors whom they do not approve". If the auditors have been dismissed by the directors, the Court will usually direct a meeting of the company to ascertain its wishes. (*Cuff v. London and Country Land Co.* (1912) 1 Ch. 440).

CHAPTER XV

DIRECTORS

Only brief notes are given on points (which the Secretary should bear in mind) connected directly with the statutory provisions relating to the appointment, qualification, remuneration, retirement, removal, powers etc., of directors of companies. As is generally the case, the directors and managing agents, are not very much conversant with various provisions of law particularly in respect of their statutory disabilities and various restrictions on their powers. It will fall to the lot of the secretary, therefore, to guide them in these and many other matters and to apprise them of the penalties to which they may be subject in case of contravention of various provisions of law.

Directors Obligatory

1. Every *public company* (including a private company which is the subsidiary of a public company) must have at least three directors (Sec. 83A).

Appointment

2. The procedure for appointment of directors is generally laid down by the Articles.

3. The first directors of the company are usually named in the articles. That is the current practice which has now become universal because it is so convenient and saves an amount of unnecessary trouble and expense.

4. If the first directors are not named in the articles, the subscribers to the Memorandum of Association shall be deemed to be the directors of the company until the first

directors shall have been appointed by the members in general meeting.

5. The acts of a director done *bona fide* are valid although any defect in his appointment is discovered afterwards (Sec. 86).

6. *Casual vacancy:*—Any casual vacancy occuring among the directors may be filled up by the board of directors. The director so appointed to fill a casual vacancy shall hold office only for the remainder of the term of the director whom he has been appointed to succeed and would be subject to retire at the time at which the director in whose place he is appointed would have retired. For the purpose of filling up a casual vacancy there must be a proper quorum (Sec. 83B).

7. *Section* 84 of the Act lays down that no person can be appointed a director of a company by the articles or even named as a director or proposed director of a company in any 'prospectus' or 'statement in lieu of prospectus,' unless before the registration of the articles or the publication of the prospectus or the filing of the 'statement in lieu of prospectus,' as the case may be, he has by himself or by his agent authorised in writing—

(a) Signed and filed with the registrar a consent in writing to act as such director; and

(b) *either* signed the memorandum for a number of shares not less than his qualification, if any; *or* taken from the company and paid *or* agreed to pay for his qualification shares, if any; *or* signed and filed with the registrar a contract

in writing to take from the company and pay for his qualification shares, if any; *or* made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

This section however does not apply to a company not having a share capital; or a private company; or a company which was a private company before becoming a public company; or a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

8. *Permanent Directors:*—Section 83B (2) of the Act lays down that notwithstanding any provisions in the articles to the contrary, not less than two thirds ($\frac{2}{3}$rds) of the total number of directors, appointed by a company at any time, shall be persons, whose period of office is liable to determination at any time, by retirement of directors in rotation. This means that the power of a company to appoint permanent directors or as they are called 'life directors' is limited; and no company can appoint or have more than one-third ($\frac{1}{3}$rd) of its total number of directors, as permanent directors.

Exceptions:—(1) It does not apply to private companies. (2) It does not apply to companies incorporated before the Amending Act 1936, which by their articles, lay down that less than $\frac{2}{3}$rds of their directors shall be liable to retire by rotation.

Qualification Shares

9. The Act does not prescribe any share qualification for a director nor does it make it obligatory upon a company to fix a share qualification for its directors in its articles.

10. The articles usually fix a number of shares which every director must hold in order to qualify himself as a director. The shares so fixed are known as qualification shares, and are meant for making directors interested in the company's affairs.

11. A joint-holder of shares may become a director (*Grundy v. Briggs*, (1910) 1 Ch. 444).

12. A director must obtain his qualification shares *within two months* after his appointment or such *shorter* time as may be fixed by the articles (Sec. 85).

13. A company cannot commence business until every director has taken up and paid for his qualification shares, the same proportion as the public (other shareholders) have to pay on application and allotment.

Vacation of Office

14. The office of a director shall be vacated on—

(*a*) failure to acquire qualification shares within the prescribed time; or

(*b*) being found by Court to be of unsound mind; or

(*c*) being adjudged insolvent; or

(*d*) failure to pay calls within six months of the making thereof; or

(*e*) accepting any office of profit, or accepting loans, or entering into contracts with the company: or

(*f*) absenting himself from three consecutive meetings of the board of directors, or for three months whichever is longer without leave of absence from the board (Sec. 861).

Resignation & Removal

15. A director may resign his office at any time. His resignation is complete when notice is given to the secretary or the board, and cannot subsequently be withdrawn (without the permission of the company in general meeting) even though there has been no acceptance of the same.

15A. A director (not being a permanent director) whose office is liable to determination by rotation, can be removed by the shareholders by an extraordinary resolution (Sec. 86G).

16. Although the appointment of directors may be made in a general meeting of shareholders, their removal requires an extraordinary resolution. A director once removed cannot be reappointed (Sec. 86G).

Assignment of Office

17. No director is competent, even if there is provision in the articles, to assign his office to any other person. And no assignment of duty is valid unless it is approved by a special resolution of the company. But the right to appoint a *substitute* or *alternate director* during any director's temporary absence in accordance with the articles, is not

affected, if it is done with the approval of the board of directors, for a period of three months only (Sec. 86B).

Remuneration

18. (*a*) They are not entitled to any remuneration unless authorised by the articles or fixed by a resolution of the shareholders in a general meeting. (*Dikshit v. Mathuraprasad*, 47 All 94).

(*b*) The remuneration payable to the directors must be disclosed in the prospectus (Sec.93).

(*c*) It is a debt due by the company, and may be paid out of capital. (*Re. Lundy Granite Co.* (1872), 26 L.T.673).

(*d*) If the remuneration of the directors is not specified in the articles, the company in general meeting may vote remuneration, in which case it will be in the nature of a gratuity payable only out of profits.

Powers of Directors

19. (*a*) The powers of the directors are generally defined by the articles of association, and within the restrictions set by the articles they have all necessary powers to carry on the business in the interest of the company as a whole, if they are not forbidden by the Indian Companies Act. (Clause 71 Table A).

(*b*) These powers are to be exercised by the directors in a body, unless the articles provide for delegation of such powers. They must act as a board and not individually.

(*c*) If the directors exceed their powers the company may ratify those acts which are within the competence of the company, but if they are forbidden by the articles they cannot be ratified without altering the articles.

(*d*) The decision of the directors regarding any matter which is assigned to them cannot be over-ridden by the company in a general meeting. But the company may withdraw such powers by altering the articles by a special resolution.

(*e*) Directors cannot delegate their powers, unless authorised by the articles to do so.

(*f*) Some of the powers of the directors are:— (*i*) the power to issue shares; (*ii*) the power to allot shares; (*iii*) the power to refuse transfer of shares; (*iv*) the power to declare dividends; (*v*) the power to contract on behalf of the company and to bind the company by acts *intra vires* the company and *intra vires* the directors themselves; (*vi*) the power to make calls; (*vii*) the power to accept the full amount payable on shares or a part of such amount, before calls are actually made for such payments; (*viii*) the power to forfeit shares for non-payment of calls; and (*ix*) the power to set aside part of the profits as reserves.

Restrictions on Directors' Powers

20. (*i*) The directors of a *public* company shall not, except with the consent of the company in a general meeting, sell or dispose of the undertaking of the company and

remit any debt due by a director (Sec. 86H); (*ii*) No director can avoid the consequences which, under ordinary law, attaches to him for his own neglect, default, breach of duty or breach of trust, inspite of any agreement or any provisions in the articles freeing him from any liability (Sec. 86C); (*iii*) Loans to directors of *public* companies (excepting banking companies) are absolutely prohibited (Sec. 86D); (*iv*) Directors are prohibited from holding an office of profit in the company without the consent of the shareholders (Sec. 86E); (*v*) Unless consented to by other directors, no director shall be entitled to enter into any contract for the sale, purchase or supply of goods and materials with the company (Sec. 86F); and (*vi*) A director interested in a contract is prevented from voting in a meeting where such a contract is to be considered, and cannot be counted in the quorum (Sec. 91B).

Register of Directors

21. (*a*) Every company shall keep at its registered office a register containing the names and addresses and the occupations, other directorships etc. of the directors or managers and managing agents (Sec. 87).

(*b*) The company must forward to the registrar a return in the prescribed form containing all the particulars shown in the register within 14 days after appointment. In case of any change in the personnel of these officers or in any of the particulars regarding any of them, a notice, in the prescribed form, regarding the change, must be made and sent to the registrar within 14 days from the date of the change.

CHAPTER XVI.

MANAGING AGENTS.

1. Sec. 2 (9A) lays down that any individual, firm or company, empowered *under an agreement with a company* to manage the whole affairs of the company (subject to the control and directions of the directors as provided by the agreement), is a managing agent.

It is immaterial what name is used for such person, firm or company provided such person, firm or company falls within the definition of a managing agent. A managing agent cannot evade the Act by having himself known as a managing director, manager or governor.

2. *Manager and Managing Agent distinguished:—*

(*a*) A managing agent holds his office under a contract with the comppany; a manager may or may not hold his office under a contract with the company.

(*b*) A manager is always subject to the control and direction of the directors; a managing agent is also under the control and direction of the directors, but his contract of service with the company might give him certain powers which he can excercise free of any control or direction of the directors, of course always subject to the various provisions of the Act, relating to managing agents.

(*c*) A managing agent's remuneration is a sum based on a fixed percentage of the net annual profits of the company together with an office allowance as fixed by the contract with the company;

if the profits are inadequate he may get a minimum payment. A manager *usually*, gets a fixed salary.

Appointment

3. Except in the case of a managing agent appointed before the issue of a prospectus or statement in lieu of prospectus, the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management, made on or after the 15th day of January 1937, shall not be valid unless approved by the company in general meeting (sec. 87 B).

Banking Companies

4. With regard to banking companies, it is provided by Sec. 277H that a banking company cannot, after the 15th day of January 1939, *i.e.*, two years after the coming into force of the Indian Companies Amendment Act, 1936, appoint or be managed by a managing agent other than a banking company for the management of the company.

Duration of Office

5. The maximum term for which a managing agent can be appointed after 15th day of January, 1937 is twenty years at a time. There is no bar to reappointment. But the termination of the office of managing agent shall not take effect until all moneys payable to the managing agent are paid. The managing agency shall terminate on winding up of the company and if the winding up is due to the negligence or default of the managing agents, they will lose their right to compensation (Sec. 87A).

6. *Removal of Managing Agents:—*

(*a*) A managing agent can be removed if he is convicted of any serious offence relating to the affairs of the company.

(*b*) The managing agency shall be automatically vacated if the managing agent is adjudged an insolvent (Sec. 87B).

Remuneration

7. (*a*) A managing agent appointed after the 15th January 1937, shall be paid by way of remuneration a fixed percentage of the net yearly profits earned by the company and an office allowance as fixed by the contract of management. Provision may be made by the company for the payment to the managing agent of a minimum amount in case the company does not make any profit or makes inadequate profits.

(*b*) If a managing agent is to be paid any additional remuneration, or remuneration in a form other than that allowed by this section, the approval of the company by a special resolution is necessary; in default of such approval by the company, the company shall not be bound to pay any such remuneration.

(*c*) The above provisions are not applicable to the case of a private company which it not the subsidiary company of a public company, or to any company whose principal business is the business of insurance, or to the case of a managing agent appointed before the 15th January, 1937 (Sec. 87C).

(*d*) *Meaning of "net profits."*

For the purposes of Sec. 87C, i.e., for the purposes of the provisions regarding the payment to the managing agent of a fixed percentage of the net annual profits, the expression "net pro-

fits" means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from any Government or any public body, profits by way of premium on shares sold, profits on sale proceeds of forfeited shares or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

Right to Appoint Directors

8. Except in the case of a private company, the managing agent cannot, in spite of any provision in the Articles, appoint more than one-third of the whole number of the directors of the company (Sec. 87 I).

Restrictions on Powers

9. The following disabilities of managing agents are important :—

(*a*) Excepting a private company which is not the subsidiary company of a public company, no company can make a loan, or guarantee any loan made, to its managing agent, or, if the managing agent be a firm or a private company, to any partner in the firm or to any member or director of such private company. (Sec. 87D).

(*b*) A managing agent, or his firm or any partner of the firm (in case the managing agent is a firm) or if the managing agent be a private company a member or director of such private company, shall not contract with the company for the sale, supply or purchase of goods and materials, unless three-fourths of the directors of the company consent to such a contract. This provision, however, does not apply to contracts made and entered into before the 15th January 1937 (Sec. 87D).

(*c*) A company incorporated on or after the 15th of January 1937, and being under the management of a managing agent, cannot make a loan to, or guarantee any loan made to, any company under the management of the same managing agent. This provision is also applicable, after the 15th July 1937, to companies incorporated before the 15th January, 1937 (Sec. 87E).

(*d*) A company (other than an investment company, i.e., a company whose main business is to obtain and hold shares, stock, debentures or other securities) cannot, without the previously obtained unanimous approval of its board of directors purchase shares, stock or debentures of a company which is also managed by its own (purchasing company's) managing agent (Sec. 87F).

(*e*) A managing agent cannot issue debentures on behalf of his company even if the company has given him the power to issue debentures. A

managing agent cannot, without the authority of the directors, invest the funds of the company (Sec. 87G).

(*f*) A managing agent cannot do any business which is similar to and competes with the business of his own company or of a subsidiary company of his own company (Sec. 87H).

(*g*) Inspite of any provisions in the Articles of a company, other than a private company, the managing agent of the company cannot appoint more than one-third of the total number of directors (Sec. 87I).

(*h*) A managing agent cannot assign or transfer his office to another without the approval of the company in general meeting. If the managing agent is a firm, a change in the constitution of the firm will not amount to an assignment or transfer of office provided at least one of the original partners of the firm remains a partner in the altered firm (Sec. 87B (c)).

(*i*) A managing agent cannot assign, or create a charge on, his remuneration, or any portion thereof (Sec. 87B (d)).

CHAPTER XVII

MANAGING DIRECTOR

A Company having many details of business to be attended to, generally requires a manager to attend to the commercial part of the business of the company, and to be responsible for its details of management. He may be *any person* or may be *one of the directors* appointed by the board of directors, with large powers for the management of the company. In the latter case he is called "Managing Director." Thus it will be seen that in his case two offices, namely that of the manager and the director are merged into one person.

Appointment

1. The articles usually contain appropriate authority to the directors for the appointment of a managing director, either for immediate operation or in case of need at some future time so as to avoid a subsequent alteration of articles. In the absence of such provision and authority in the articles, the maxim *"delegatus non protest delegare"* (a delegate cannot appoint a delegate) shall apply and no delegation of powers would be possible. Thus it has been held that apart from express provision in the articles or by resolution of the company in general meeting, directors can neither appoint nor dismiss a managing director, on the ground that directors cannot appoint one of their number to an office of profit or delegate their powers.

2. The appointment of the managing director when authorised by the articles and/or delegation of powers to him must be made at a meeting of the board where proper quorum is present excluding the interested director.

3. If the Articles give the power of appointing managing director to the Board, the company in general meeting cannot make or interfere with the appointment even if there is another article empowering (directors) to manage *subject to such regulations as the company may prescribe* unless the directors are unable or unwilling to act in the matter in which case the company can make the appointment.

4. The directors cannot appoint a managing director on condition that he is to be free from their supervision (*Horn v. Henry Faulder & Co*, (1908) 99 L.T. 524).

Position & Duties

5. Managing Director is an ordinary director with some special powers. It has been held in India that the duties of a Managing Director are of a higher standard than those of an ordinary director. If he dishonestly conceals any important transaction from the other directors and or where the company suffers any loss by his act impelled by motives of personal gain, he is liable to make compensation (*S. C. Mitra, Liquidator, Bank of Oudh Ltd., v. Nawab Ali Khan* (1926) 92. I.C. 50).

6. His duties are regulated by the terms of his appointment or by the regulations of the company. He must act honestly and in the best interests of the company. Being in fiduciary position as agent of the company, he must not accept commission or bribes or presents from persons having dealings with the company. If he does so, he may be liable to be dismissed without notice and called upon to pay over to the company the amount received.

6A. A Managing director occupies the position of a trustee for the company and he is bound to exercise his powers for the benefit of the company and for that alone.

He cannot withdraw from the till of the company a sum of money and mix it with money belonging to himself. In such a case he is guilty of breach of trust and misfeasance.

Powers & Outsiders

7. He derives his powers from the board under whose control and supervision he acts. As such he is an agent of the company and can do all such acts and things which are required to be done in the conduct or management of the affairs and business of the company and within the scope of his authority.

8. It has been held that persons dealing *bona fide* with a managing director are entitled to assume that he has all such powers as under the constitution of the company a managing director can have (*Dehradun Mussoorie Electric Tramway Co., Ltd., v. Jagmandar Das & Others* (1932) All 141).

9. The company will not be bound by the acts of the managing director if done in his private capacity.

Remuneration

10. This must be defined in the articles, and may be either a salary, a commission on profits made by the company, or commission on the business generally. Table A (Clause 72) provides for remuneration "by way of salary, or commission, or participation in profits, or partly in one way and partly in another."

11. Where a managing director is paid on the basis of a 'percentage' of the 'Net profits' or 'profits', in absence of any agreement, he is entitled to have the amount of such percentage ascertained before income-tax has been deducted. It has, however, been recently held that "If the

managing director's commission is on 'net profits' or 'profits earned by the company', this means the excess of the receipts of the year over the current expenses and out-goings of the year i.e., the found which but for such commission might for that year be lawfully applied in payment of dividend, and any liability for *excess profits duty* for that year must be deducted in arriving at the "net profits".

12. Where the power of altering remuneration is reserved to the company in general meeting, the board cannot grant a retiring pension to a managing director.

13. A managing director is not "a clerk or servant" within the meaning of Section 230 (1), which provides for perferential payment in a winding up of all wages or salary of any clerk or servant in respect of services rendered to the company during two months before the date of winding up. But where the articles allow a director to be employed in another capacity, the director is a preferential creditor for salary due in the latter capacity.

Resignation & Removal

14. A managing director will be subject to the provisions in the articles dealing with the resignation and removal of directors. The Managing Director may like any other agent, retire on giving the directors a proper notice of his resignation. His resignation is not dependant upon any acceptance by the company, and he cannot withdraw such a notice, even before it has been accepted by the board, except with the consent of th board.

15. A managing director, being an agent of the company, is liable to *summary dismissal for misconduct* if he takes secret commissions and is also liable to account for them. And if he is dismissed for misconduct, he will not be

entitled to his salary for the current term, whether that is a year or a quarter or other period.

Liability

16. If a manager (a managing director is, as stated before, *manager plus director*) commits such a breach of his duty as to cause an immediate loss to the company, he is liable in damages.

17. He is liable for negligence in preparing balance-sheets and accounts whereby he has caused dividends to be paid out of capital.

18. As an officer of the company he is liable for wilful default in complying with various requirements of the Act in the matter of returns etc.

19. He is liable to be examined privately or publicly (under Sections 195 and 196) in a winding up and if a delinquent, he may be rendered liable for misfeasance (under Section 235).

20. He will be liable (under Section 236) for falsifying any books or documents of the company and similarly he would be subject to other penal provisions of sections 237, 238, 238A and 282 of the Act *but he is also entitled to relief* under section 281 of the Act.

21. He will be personally liable for signing any bill of exchange, promissory note, cheque, etc., without disclosing his representative capacity and without the use of the name of the company with the word "Limited" on all such instruments.

CHAPTER XVIII

MEMORANDUM & ARTICLES OF ASSOCIATION

1. *Their Relation.*—Articles are subject to the memorandum and cannot give powers which are not conferred by the memorandum nor can they purport to create rights which are inconsistent with the memorandum. The rule with regard to this may be stated as follows:—

(*a*) With regard to matters which must, by statute, be provided by the memorandum, it must be regarded as the dominant document. Subject to this, the memorandum must not be regarded as the dominant document but must be read in conjunction with the articles, which may be used to explain or amplify the memorandum. This is because the two are contemporaneous documents, registered at the same time and therefore if there is any ambiguity or if the memorandum is silent on any point, the articles may serve to explain or supplement the memorandum.

(*b*) Where, however, there is no ambiguity or lacunae in the memorandum its terms cannot be controlled or modified by the provisions of the articles. Thus, where the directors of a company, in the exercise of the absolute discretion given to them by the articles, attempted to use a reserve fund, specially created by the memorandum for the benefit of the preference shareholders, for other purposes, it was held that it could not be done.

2. *Construction of Memorandum by Articles.*—In so far as the items mentioned in the Memorandum are concerned, it is not allowable to explain or modify them, by a reference to the Articles of Association, even when there appears to be any ambiguity in the former.

But the articles of association can be referred to for explaining the Memorandum in respect of any matter which need not appear in the latter e.g., the borrowing powers.

3. *Alteration of Memorandum.*—An alteration of the memorandum, for domicile of the company from *one province to another* in India or for a reduction of capital can only be effected by Special Resolution confirmed by an order of the Court.

4. The following alterations can be made by Special Resolution only i.e., without needing confirmation by the Court:—

(*a*) Changing the name of the company (Sec. 11). It, however, requires, the consent of the Local Government.

(*b*) Increasing the amount of the Nominal Capital (Sec. 50).

(*c*) Altering the division of Capital, consolidating or sub-dividing existing shares, converting paid-up shares into stock or cancelling shares not taken up (Sec. 50).

(*d*) Making the liability of directors or any director unlimited (Sec. 71).

5. *"Table A":*—Table A consists of a series of regulations formulated by the legislature for the conduct of

the affairs of a company limited by shares and included in the First Schedule to the Indian Companies Act, 1913.

(*a*) These regulations (as laid down by Section 18 of the Act) in so far as their operation is not excluded by the registered articles of a company, will govern and regulate the internal management of the affairs of a company.

(*b*) The binding effect of the provisions of Table A has been further extended by the recent amendment of section 17 of the Act, clause 2 whereof lays down that Regulations 56, 66, 71, 78 to 82, 95, 97, 105, 107 & 112 to 116, shall be deemed to be contained in all articles of associations of companies. In other words, these specified regulations of Table A, will constructively form part of all articles of association, and no company by means of its own articles or otherwise, can exclude the operation of these regulations.

(*c*) This new amendment is of great importance to company administration; because promoters, directors and others who are interested in company management are thereby prevented from so framing the articles as to obtain complete control of a company's administration.

6. *Alteration of Articles—*

Section 20 of the Act provides that "subject to the provisions of the Act and the conditions contained in the Memorandum, a company may *by special resolution alter or add* to its Articles and such alteration or addition, as made shall be vaild as if orginally contained in the

Articles and shall be subject to alteration in like manner by special resolution." From the concluding portion of the above provision of the Act it is clear that a company cannot in any manner, either by express provision in its Articles or by independent contract deprive itself of the statutory power to alter its Articles.

(*b*) This right of alteration of articles, however, is subject to the following conditions:—

(*i*) Every alteration must be effected by *special resolution* of the company in general meeting.

(*ii*) The alteration must not exceed the powers conferred by the company's Memorandum.

(*iii*) The alteration must not be inconsistent with any provision of the Companies Act.

(*iv*) The alteration must not be in breach of contract with an outsider, but it is otherwise if the outsider has taken the contract subject to the risk.

(v) The alteration must not retrospectively affect a contract entered into by the company. In other cases, articles can be changed retrospectively.

CHAPTER XIX

DIVIDENDS & NOTICES

DIVIDENDS

1. The declaration of a dividend constitutes a debt due by the company for which shareholders are entitled to sue.

2. It is the company that must declare dividends in general meeting, the directors only recommend dividends, *but* no dividends can exceed the amount recommended by the directors (Clause 95 Table A).

3. No dividends can be paid out of capital; dividends can be paid only out of profits of the year or any other undistributed profits (Clause 97 Table A).

4. Directors paying dividends out of capital are jointly and severally liable to pay the amount to the company.

5. Dividends are usually paid annually, but the directors may in their discretion, if the Articles so authorise, pay *interim dividends.*

6. Before recommending a dividend directors may set aside sums to Reserve.

7. Provided the Articles contain the necessary authority, the Reserve can be drawn upon to pay dividends.

NOTICES

(A) *Notice to the Company.*

1. With respect to notices *given* to or *served on* the company, Section 148 provides—"A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company."

2. It may be noted that the term "document" *includes* summons, *notice*, order, and other legal process, and registers. Thus the provision applies to a writ of summons in civil proceedings, so that a writ may be served by post. It also applies to a summons in criminal proceedings, which accordingly must be served at the registered office.

3. *Notice to Officers*:—

(*a*) In order that notice to a company may be effectual it should either be given to the company through its proper officers or received by the company in the course of its business.

(*b*) Notice to a director in that character is sufficient unless:—

(*i*) It is received in the course of a transaction in which he was not concerned as director.

(*ii*) As a director of a board of another company, or

(*iii*) It relates to a matter which he was not bound to and did not disclose, or

(*iv*) It is a case in which he is acting fraudulently.

(*c*) Notice to an officer of a company must, as a rule, in order to affect his company, be given to him as being its officer. Notice to a secretary in his private capacity is not notice to his company.

(*d*) *Knowledge* of a fact by a single director is not necessarily notice to the company and a company is not to be taken to have notice of all its secretary knows, e.g., of matter communicated to him as secretary of another company, for he is under no duty to pass that knowledge on (*Fenwick, Stobert & Co.* (1902) 1 Ch. 507).

(*c*) *Verbal Notice*:—

(*i*) A verbal notice to a company is effcetive. Such a notice should be given to the secretary at the registered office.

(*ii*) A verbal notice given to the managing director (or the secretary) in that character, on a matter affecting his company is notice to the company.

(*iii*) A verbal notice to a sitting board will suffice.

(B) *Notice by a Company.*

4. Sending of notices to and service thereof on the shareholders and representatives of deceased members etc., are matters now regulated by "Articles 112 to 116 of Table A" which are compulsorily applicable to all companies.

5. *Debenture Holders*:— For the purpose of calling a meeting of debenture holders in the absence of special provision, notice by advertisement, even when some of the debentures are registered, is sufficient.

6. *Holders of Share Warrants*:—No notice of general meeting is necessary to be sent to the holders of share warrants, whose names may be unknown to the company. Generally such a provision is made in the Articles.

7. *Service of documents on Registrar*:—By Section 149 of the Act it is provided that a document (which includes notice), may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

CHAPTER XX

PRIVATE COMPANIES

Definition

A PRIVATE COMPANY is defined by Section 2 (13) of the Act as a company which by its Articles:—

(*a*) restricts the right to transfer its shares, if any;

(*b*) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(*c*) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company;

Notes—(i) A private company cannot issue 'Share Warrants.'

(ii) Private companies can also be of any variety e.g., limited by shares, or guarantee or unlimited. They can be 'holding companies' or 'subsidiaries'; as 'subsidiaries,' they may be such, of other public or private companies.

Privileges of Private Companies

A 'private company' enjoys the following privileges and exemptions:—

(*i*) It may consist of two members only (Section 5);

(*ii*) It need not hold a statutory meeting nor send to members or file with the registrar a statutory report (Section 77);

(*iii*) It may not have any directors (Section 83A), unless it is a subsidiary of a public company;

(*iv*) Provisions as to appointment and retirement of directors do not apply (Section 83B);

(*v*) Provisions as to restrictions on appointment or advertisement of directors do not apply (Sec. 84);

(*vi*) Directors need not file a consent to act or sign the memorandum or a contract for their qualification shares (Section 84);

(*vii*) The following provisions as to Managing Agents do not apply unless it is subsidiary of a public company:—

(*a*) Period of Managing Agency (Sec. 87A);

(*b*) Remuneration of Managing Agents (Sec. 87C);

(*c*) Loans to Managing Agents (Sec. 87D);

(*d*) Nominee-Directors of Managing Agents (Sec. 87 I).

(*viii*) Interested directors may vote and be counted in quorum in their contracts with the company (Section 91B).

(*ix*) Provisions as to contracts by agents of company in which company is undisclosed principal do not apply unless it is subsidiary of a public company (Section 91D).

(*x*) A statement in lieu of prospectus need not be filed (Section 98);

(*xi*) Shares may be allotted; no minimum subscription is necessary (Section 101);

(*xii*) It may commence business or exercise borrowing powers immediately it is incorporated (Sec. 103);

(*xiii*) It is not required to send a copy of the balance sheet to the members (Section 131); but it must hold a general meeting every calendar year, at which the balance-sheet profit and loss account and the directors' report must be laid before the shareholders;

(*xiv*) It is not required to file a copy of the balance-sheet with the registrar (Section 134);

(*xv*) Its auditor may not hold Auditor's Certificate granted by the Governor-General in Council (Section 144), unless it is a subsidiary of a public company;

(*xvi*) Preference shareholders have no right to receive and inspect balance-sheets, auditor's reports and other reports (Section 146).

Commission on Shares

If a Private Company wishes to pay commission to a person as a consideration of subscribing or procuring subscription for any shares in the company, a statement in the 'prescribed, form' giving the amount or rate of commission must be filed with the Registrar before the commission is paid (Sec. 105), otherwise the payment will be illegal.

Annual Certificate

A 'Private Company' must send, with its annual return, a certificate signed by a director or other officer of the company, that the company has not since the date of the last return (or in case of a first return, since the date

of incorporation), issued any invitation to the public to subscribe for any shares or debentures, and, if the number exceeds fifty, a certificate that the excess consists wholly of persons in the employment of the company (Sec. 32 (4).

Conversion into a Public Company

Under Section 154 of the Act, if a Private Company alters its articles in such a manner that they do not contain previous restrictions imposed on it under Section 2 (clause 13 of subsection (1)) i.e., so as to permit it to invite the public to subscribe for its shares or debentures and to allow the membership to exceed fifty and/or to allow the issue of share-warrants and unrestricted transfer of shares, it may, by filing within 14 days of such alteration of its articles, a Prospectus or a "Statement in Lieu of Prospectus" convert itself into a Public Company.

Loss of Privileges

In order to provide against defaults being made on the part of the company in complying with the provisions above mentioned, Sec. 154 (3) provides that if a 'private company' alters its articles so as to preclude itself from coming within the definition of a private company, i.e., the company commits a breach of the statutory requirements of a private company, the company shall lose (cease to enjoy) all privileges or exemptions conferred by the Act and shall become subject to all provisions of a Public Company. The Court may, however, (on the application of the company or any other person interested therein against the consequence of such default), grant relief, on terms just and expedient, if satisfied that the failure or default was (a) accidental; or (b) due to inadvertence; or (c) due to some other sufficient cause; or (d) that on other grounds it is just and equitable to grant relief.

CHAPTER XXI

MISCELLANEOUS MATTERS

COMMON SEAL

1. The company must have a common seal with its name correct in every detail engraven thereon (Secs. 23&73).

2. The common seal is usually impressed upon share certificates, share-warrants, trust deeds, debentures, contracts, mortgages, powers-of-attorney and other important documents, usually in the presence and with the authority of two directors, who sign the document, which is then countersigned by the secretary or the managing agents.

3. Provisions are usually contained in the Articles with regard to the authority necessary for affixing the seal and as to who must attest the sealing of the documents.

4. An impression made in ink with a wooden or rubber block is a valid sealing but a printed circle with the letters "L.S." or words "Place for Seal" is not.

5. In case of no provisions in the Articles, persons having power and authority to manage the affairs of a company (such as Manager, Managing Agent, Managing Director or Secretary if he habitually conducts the business) have an implied power to use its seal.

6. The seal should always be kept in safe custody. It is generally enclosed in a case with two locks, different persons holding the keys.

SHARE WARRANTS TO BEARER

1. The statutory power to issue share warrants to bearer is given by the Act, but any such issue must be autho-

rized by the company's own articles, and must be only with respect of fully paid shares.

2. Private companies, however, must not issue share warrants, as the total number of members is restricted and if share warrants were issued, the company would not be in a position conclusively to give the certificate of total membership required by the Act.

Negotiability

3. Share warrants are "negotiable instruments," hence the property in them (ie., the right of absolute ownership) passes by delivery and it is therefore necessary for the warrant to certify that the BEARER "is entitled to . . . . . fully-paid shares."

Issue of the Warrants

4. Registered shareholders desiring to convert their paid-up shares into share warrants are required to make application in writing, pay the prescribed fees and stamp duties, and surrender the share certificates. The shareholder's account in the Register of Members is closed, and the shares converted are transferred to a Share Warrants Account.

5. The warrant issued states the number of shares, their distinctive numbers and is dated, sealed and signed by the directors in the same manner as a share certificate.

Reconversion of Registered Shares

6. Holders of share warrants may apply for the shares to be registered in their own name, paying the usual registration fee and surrendering the share warrants.

7. Section 32 of the Companies Act requires that the Annual Return must give particulars of the total amount of

shares for which share warrants are in existence, together with the total amount of the warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each share warrant.

INTEREST PAYABLE OUT OF CAPITAL

1. Under Section 107 of the Act, companies are empowered to pay interest on shares issued to provide the capital for the construction of works, buildings or the provision of plant during the period of such construction, etc., and may charge the interest as part of the cost of the erection of the works and buildings or the provision of the plant.

2. The payment of interest is subject to the following conditions:—

(*i*) Authorization by the company's articles or by special resolution.

(*ii*) Sanction of the Local Government.

(*iii*) Rate of interest must not exceed 4 per cent. per annum or such lower rate as is authorized by the Governor-General.

(*iv*) The accounts of the company, from time to time, must show particulars of the share capital on which (and the rate per cent. at which) the interest has been paid for the period shown in the accounts.

3. Such interest can only be paid during the period sanctioned by the Local Government, which must not extend beyond the half-year following the half-year in which the works, buildings, etc., are completed.

CONSIDERATION OF SHARES

Shares may be paid for in money or money's worth, e.g., goods, services or other valuable consideration, or by

setting off an existing debt owing by the Company, or any other release not *ultra vires*.

SOLICITORS

1. A company's Solicitor may be nominated by the Articles of Association, but such nomination does not create a contract to employ him or give him any right to damages if the company refuse to employ him.

2. A provision in the Memorandum or Articles that the Company shall pay all preliminary expenses of formation does not give the Solicitor acting in the formation any claim against the company for his costs incurred prior to Incorporation.

3. Any lien which a Solicitor acting for a Company may have for his costs is subject to the Companies' Act and the Articles, and will not therefore attach to any books or documents which the Act or the Articles require to be kept at the Company's Office.

BANKERS

1. The Resolution of the Directors appointing the Company's Bankers and deciding who shall sign cheques, bills, etc., whether on the commencement of business or on any subsequent change of Bankers, should be in the form prescribed and supplied by the particular Bank.

2. In opening an account it is usually necessary to produce to the Bank the Certificate of Incorporation and a copy of the Company's Memorandum and Articles.

3. Notice should be given immediately to the Company's Bankers of all changes in the Directorate or the office of Secretary and of all Resolutions altering the arrangement for signing Cheques, Bills, etc.,

VOLUNTARY WINDING-UP

1. A Voluntary Winding-up is effected by passing a Special Resolution except when the winding-up is by reason of insolvency, when an Extraordinary Resolution suffices. In that case the resolution must state that "by reason of its liabilities" the company cannot continue its business.

2. On the passing of the Resolution the Company ceases to carry on business except so far as is necessary for the beneficial winding-up.

3. On his appointment the Liquidator takes sole control of the assets and property of the Company.

4. A Voluntary Winding-up may be either a "Members' Voluntary Winding-up" or a "Creditors' Voluntary Winding-up".

5. To constitute the former (under which the liquidation is largely in the hands of the Members) it is necessary for the Directors, or a majority of them, to make a Statutory Declaration to the effect that after full inquiry by them they are of opinion that the Company will be able to pay its debts in full within a period of 3 years from the commencement of the winding-up. It is essential that this Declaration be made at a meeting of Directors held before the Winding-up Meeting is held and filed with the Registrar also before that Meeting. If this declaration is not made the Winding-up is a "Creditors' Voluntary Winding-up," in which case the Liquidation will be controlled by the Creditors.

PART II

SECRETARIAL PROCEDURE

&

ROUTINE.

CHAPTER XXII

APPLICATION FOR AND ALLOTMENT OF SHARES

Upon incorporation of a company as a *Public Company,* the first necessity is to obtain the trading capital of the company, and this may be arranged privately or by public subscription.

Prospectus

If the latter course is adopted, the prospectus must be filed with the Registrar of Companies prior to its public issue; in the former case a "Statement in Lieu of Prospectus" must be filed with the Registrar.

Application Forms and Money

With the prospectus, Application Forms are enclosed, and if the share capital is divided into different classes distinctively coloured forms will be issued for each class.

Applicants must send these forms, with the application money, to the company's bankers, by whom they are listed and entered in the Bank Pass Book.

The amount payable on application must not be less than 5 per cent. of the nominal amount of the shares.

All moneys received from Applicants for shares shall be deposited and kept in a Scheduled Bank until returned in case of no allotment being made or until the certificate to commence business is obtained.

Allotment Sheets

The application forms are examined and checked with

the pass book and then listed on separate sheets. A Specimen Form is given below:—

Application and Allotment Sheets.

Date	Application No.	Name	Address & Occupation	Shares applied for	Paid on Deposit	Allotment No.	Shares Alloted	Total due on Application and Allotment	Balance Payable on Allotment	Amount Returned	Date Paid	C. B. Folio	Distinctive Nos	Share Certificate No.	Reg. of Mem. Fol.	Remarks.

For small issues, the entries on these sheets may be made to correspond with the banker's lists, but with large issues it is more convenient to re-arrange the application forms alphabetically and use separate sheets for each letter of the alphabet. In this way, the work may be divided amongst several clerks.

Each sheet is separately totalled and a final summary sheet compiled to record the totals of the separate sheets.

After the allotment is completed, the sheets may be bound in book form.

Minimum Subscription

No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital, has been duly subscribed and received.

The minimum amount so referred to will consist of each of the following items—

(*a*) The purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(*b*) Any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure, subscriptions for any shares in the company;

(*c*) The repayment of any moneys borrowed by the company in respect of any of the foregoing matters; and

(*d*) Working capital.

The Allotment

When the minimum subscription is reached, the cheques cleared by the company's bankers and the lists closed, a board meeting must be convened to consider the applications and make the allotment.

The application sheets should be initialled by the chairman, and on the summary sheet a note of the total allotment made, thus—

".....shares allotted.....day of.....19....

Chairman."

A minute of the proceedings and resolution of allotment must be recorded in the minute book.

Withdrawals

Any applicant may withdraw his application and be entitled to a return of the money deposited, at any time prior to the posting of the Letter of Allotment.

Posting of the allotment letter completes the contract, which then becomes irrevocable and binds both the company and the allottee. Any subsequent notice of withdrawal has no effect. A record of the posting of the allotment letters (date, time, place and by whom) should, therefore, be kept.

Allotment Letters

Where the prospectus provides for payment of the share capital in instalments, the allotment letter commonly provides receipt forms for the instalments and perforated slips which are detached by the bank upon payment and retained as the company's voucher.

Return of Allotments

Within one month from the date of allotment, this return must be filed with the Registrar of Companies. The return must state—

(*i*) The number and nominal amount of the shares allotted, distinguishing the various classes of shares.

(*ii*) The amount due or payable on each share.

(*iii*) Particulars of the shares allotted for a consideration other than cash, and the amount treated as paid on each share.

(*iv*) The names, addresses, and occupations or descriptions of the allotees.

The contract constituting the title of the allottee to shares allotted for a consideration other than cash, also must be filed with the Registrar; and if the contract is not reduced to writing, particulars of the contract, duly stamped according to its nature, must be filed.

CHAPTER XXIII.

CALLS

The term "call" is generally used to denote the instalments on the shares payable subsequent to the amount due on allotment. The amount of, and the intervals between, each instalment are regulated by the company's Articles of Association.

How Made

Where the instalments are payable on definite dates stated in the prospectus, the allotment letter commonly provides particulars of the amounts due with receipt forms appended, and similarly the Allotment Sheets will provide extra columns for these instalments.

But the conditions of issue generally provide for the payment of, say, Rs. 2-8 per Rs. 10 share on application and Rs. 2-8 on allotment; the balance of Rs. 5 per share being called up as and when required by the company. In such cases, the articles usually authorize the directors to make calls. Table A provides that "no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call." It is also customary to provide for the payment of interest on overdue calls.

At a duly convened board meeting the directors must formally resolve to make the call, fixing the date and place of payment. Under Table A, fourteen days' notice must be given.

Call Book or Sheets

A Specimen Form of this is given below :—

Call Book or Call Sheets.

..... Call of Rs..... per share made on ..... payable by..... making Rs..... per share paid up.

No. of Call Notice (letter)	Folio in Register of Members.	Name & Address of Shareholder.	Number of shares held.	Amount due on shares held.	Date paid.	Cash Book Folio	Amount paid.	Balance due.	REMARKS.
									Note: In this column will be noted, any instructions received to apply to bankers, or powers-of-attorney etc., for further calls or any notes of forfeiture etc,

Where two calls are payable at short intervals, additional columns may be provided to record particulars, but if there is a long interval of time it is better to prepare separate call sheets for each call.

Call Notice

A Call Notice, in accordance with the company's

articles, of the directors' resolution must be issued to each shareholder.

It must be clearly marked "First Call," "Second Call," etc., and show the amount called up per share, the total amount payable and also the total amount which will then be paid on the shares, e.g., "making the shares (say) Rs. 7-8 paid."

Calls Paid in Advance

Many shareholders prefer to pay calls in advance, and it may be useful to provide an extra column either on the allotment sheets or on the call sheets to record such payments.

CHAPTER XXIV.

SHARE CERTIFICATES

The Act provides that a certificate under the Common Seal of the company shall be *prima facie* evidence of the title of the members to the shares or stock.

Certificates are commonly signed by two directors and the secretary or the managing agents.

Issue of Certificates

Companies must issue certificates within *three months* after the allotment of any shares, debentures etc., or within *three months* of the date on which a transfer of any shares, debentures etc., is lodged, unless the conditions of issue otherwise provide.

Where the full nominal amount of the shares is to be called up during a period of, say, three months from the date of allotment it is a convenient practice to defer the issue of certificates until the shares are fully paid, but the prospectus must so provide. This practice avoids the large amount of clerical labour involved in issuing certificates for partly-paid shares and, subsequently, endorsing thereon the payment of various calls.

Certificates are always printed and bound in book form, perforations dividing the certificate from the counterfoil. Sometimes a receipt form is attached to the certificate.

Where distinctive classes of shares are issued (e.g. Preference and Ordinary) distinctive colours should be used, either in the paper itself or in the printing, and these colours should correspond with the colours used for the application and allotment forms, and call letters for each class of share.

Joint Accounts

Where shares are held jointly the articles commonly provide that only one certificate shall be issued, and delivery to one of the joint holders shall be deemed delivery to all.

The general practice is to treat the first-named holder as the representative of the other holders.

Lost Certificates

Occasionally shareholders lose their allotment letters, call receipts, and sometimes their share certificates. In such cases, the directors are authorized by the articles to issue new share certificates upon such terms as to evidence and indemnity as they think fit. A specimen letter of indemnity is given below.

LETTER OF INDEMNITY

(Address).....

The Directors, ...
The "A" Co., Ltd.
Gentlemen,

The original certificate No.....for.....shares in the above company having been mislaid, destroyed, or lost, I hereby undertake, in consideration of the company issuing to me a new share certificate for the above-mentioned shares, to indemnify the company against all loss, damages, cost and expenses which may be paid, incurred or sustained by the company by reason or in consequence of the original certificate having been mislaid, destroyed, or lost, or by reason or in consequence of the issue to me of a new certificate.

Dated this.....day of ....., 19.....

Witness STAMP .....
(Signature)

A similar indemnity, adapted to the circumstances, may be used for lost allotment letters, lost transfers, or lost dividend warrants.

It may be advisable to obtain also a Statutory Declaration from the shareholder narrating the circumstances with particulars of the certificate and declaring that he has not sold, pledged, or otherwise parted with his interest in the shares. Some companies require a banker's guarantee or other surety.

CHAPTER XXV.

TRANSFER OF SHARES

The right to transfer is conferred by the Act, which provides that "the shares or other interest in a company shall be personal estate, transferable in manner provided by the articles of the company." Unless the articles provide for the restriction of this right, directors are compelled to register all transfers submitted to them.

Certification of Transfer

A certified transfer is one which bears a statement (usually in the top left-hand corner) that the relative share certificate has been deposited with the company. This arises when the seller disposes of part only of the shares represented by the certificate. The transfer form, executed by the transferor and with the transferee's name stated therein, is presented to the company, accompanied by the share certificate. The latter is retained by the company and cancelled, whilst the transfer is certified by the secretary in the following manner:—

CERTIFICATE for.....shares.....paid
lodged at the company's office.
For The "A" Company, Ltd.
No..... .....
....., 19..... *Secretary.*

It is then returned to the broker for the transferor with a Balance Ticket for the remainder of the shares represented by the certificate. The transferor's broker then delivers the certified transfer to the broker acting for the transferee and, in due course, the latter completes the transfer which is subsequently lodged with the company for registration.

Legally, the effect of certification is to show that, *prima facie*, the transferor is entitled to the shares named in the transfer. It does not amount to a warranty of the transferor's title or to the validity of the documents. But where a transfer was certified by a proper officer of the company that the shares were fully paid and the transferee, in good faith, completed the shares on that basis, it was held that the company were estopped from denying that the shares are fully paid.

A record of the transfers certified should be endorsed upon the back of the cancelled share certificate and particulars entered in a Register of Certified Transfers of which a Specimen Form is given below:—

Register of Certified Transfers.

Certification No.	Date Certified	Name of Transferor	Old Certificate No.	Transfers Certified for	No. of Shares	Date of Registration of transfer	Balance Ticket No. and Shares	Name of Transferee	Remarks

Balance Ticket

This entitles the transferor to a new certificate for the remainder of the shares. Many companies, however, issue new certificates only when specially requested, as the shareholder may present further transfers for certification, in which case he surrenders the balance ticket, receiving a new balance ticket if any shares are still left unsold. The tickets may be bound in books with duplicate sheets interleaved for use with pen-carbons, or, alternatively, with counterfoils as in an ordinary cheque book.

THE "A" COMPANY LIMITED

BALANCE TICKET

Calcutta.

No. ....19.....

Received Share Certificate No. ..... in name of..... for.....shares Nos.....to.....against which transfer has been certified for .....shares Nos:.....to.... Balance due shares Nos.....to ....

Issued to:

M..... For The "A" Co., Ltd.,

....*Secretary.*

NOTE.—Further transfers against this balance can only be certified against the production of this ticket. A new certificate will be prepared only upon receipt of written request.

Lodgment for Registration

When completed, the transfer is lodged with the company for registration accompanied (unless it is a certified transfer) by the share certificate and registration fee, if any.

Before acceptance, the documents must be examined to ascertain that they are complete and in correct form. The

transfer must be correctly stamped, dated, the company's name correctly given, the distinctive numbers of the shares correctly entered and in agreement with the numbers appearing on the share certificate, executed by both transferor and transferee, their signatures properly witnessed, the occupation or description of the transferee stated and, finally, the signature of the transferor compared, if possible, with his signature when previously acquiring the shares.

Alterations in the transfer should be initialled by both parties, but if the transferree's name has been altered an explanation must be obtained, and, where a name is substituted, a certificate, that there has been no subsale.

The Secretary then gives notice to the shareholder who has sold any shares, to the effect that a transfer deed signed by such shareholder has been lodged with the company for registration.

When shares are being transferred by personal representatives of deceased members, their representative capacity should be clearly stated in the transfer, e.g.—

A B of.....and C D of.....executors of E F deceased.

Separate transfers should be required when more than one class of share is being transferred.

Transfer Ticket

If the transfer documents are in order, a Transfer Ticket is issued to the transferor; this acts as a receipt of the transfer fees and as a voucher for the issue of the

new certificate. A specimen is appended:—

THE "A" COMPANY LIMITED

TRANSFER TICKET

Calcutta.

.....19...

No.....

ORDINARY SHARES.

Received from ..... the following Transfer Deeds for Registration, subject to the approval of the Directors.

New Certificate will be ready for delivery in exchange for this receipt on.....

For The "A" Co., Ltd.,

..... *Secretary.*

Fees Rs. paid

No. of Shares.	Consecutive Nos. ....to.....	In favour of

The Transfer Tickets are bound in books in similar manner to the Balance Tickets described on page 144.

Transfer Advice

After lodgment of the transfer, a formal notice is sent to the transferor stating that a tansfer deed, purporting to be executed by him and transferring.....shares to..... .....has been lodged for registration and that, unless notice to the contrary is given it will be assumed that the transfer is in order and will be submitted to the directors for

registration in due course. This notice is a valuable precautionary measure against fraud.

Transfer Register

Particulars of Transfers are entered in this register, of which a ruling is shown below:—

Register of Share Transfers.

No. of Transfer	Date of Registration of Transfer.	Transferor				Transferee			Shares Transferred.				Remarks.
		Folio in Register of Members.	Name	Address	Occupation	Folio in Register of Members	Address	Occupation	How many shares	Distinctive Nos. From	Distinctive Nos. To	No. of New Certificate	

Transfers are submitted to the directors at the next board meeting for approval. New certificates are prepared for signature and sealing at the succeeding board meeting.

Every transfer must be carefully preserved; it is the evidence that the transferee has agreed to be bound by the company's regulations. Some companies paste the transfers into guard books, but a more convenient method is to bind them into "books" of, say 100 transfers.

CHAPTER XXVI.

TRANSMISSION OF SHARES.

Transmission of shares is the term used to denote the passing of the property in shares by operation of law upon the death, lunacy or bankruptcy of a shareholder, and must not be confused with transfer of shares. For further details *see* Part I, pages 20-21.

The Right to Deal with the Shares

In each instance, this right vests in the legal personal representatives; viz., the executors, administrators or legal heirs of deceased shareholders, the committee or guardian of a lunatic and the trustee or receiver of a bankrupt.

These rights are evidenced by the grant of Probate to the executor of the will of a deceased member, Letters of Administration to the adminstrator of the estate of an intestate person, Succession Certificate to the legal heir of the deceased and an Order of the Court to the committee or guardian of a lunatic or Appointment Order to the trustee or receiver of a bankrupt.

An abstract of these documents is entered in the Register of Legal Representatives; and the names being noted in the Register of Members also. After registration the above named documents of authority are marked with the fact of registration by means of a rubber stamp. The documents are then returned.

Joint Accounts

Upon the death of a joint holder his interest in the shares, under most of the Articles, passes to the survivors and a certificate of death is sufficient evidence of their title.

Some companies, however, require a Statutory Declaration identifying the person described in the death certificate as the shareholder named in the share certificate.

Specimen Registers

The following specimen registers of Legal Representatives and of Proof of Death in Joint Holdings are given. Similar registers are adopted to record the registration of the appointment of Trustee or Receiver in Bankruptcy or Committee or Guardian of a Lunatic.

These records may be contained in one book (different sections of the book being reserved for each class of document) or in separate books.

Register of Legal Representatives.

No.	Date of Registration.	Shareholder		Date of death	Executor, Successor or other Representative			Reg. of Members Folio	Remarks.
		Name	Address		Name	Address	Occupation		

Register of Proof of Death in Joint Holdings.

No.	Date of Registration	Shareholder		Date of Death	In Joint Account with		By whom Left	Reg. of Members Folio	Remarks.
		Name	Address		Name	Address			

CHAPTER XXVII.

DIVIDENDS

Preparation for Dividend

The customary practice is for the directors to pass a resolution that the Transfer Books of the company will be closed for a stated period for the preparation and payment of the dividend, and resolution authorizing the dividend should state that the dividend will be "paid to those shareholders whose names appear on the company's register on the.....day of.....19....."

Dividend List

In the first instance, a complete list of the shareholders, showing the amounts held by each member must be entered on the dividend sheets, which may be in the form given below:—

Dividend Book (Ordinary Shares).

Dividend at ..... per cent. p. a. payable on.....19 , in respect of the year ending.....19 .

Folio in Register of Members	Name	Address	No. of Shares held	Amount paid on shares	No. of Dividend Warrant	Amount of Dividend	Income-Tax to be deducted at..... in the Re.	Net Amount payable	Date paid	Cash Book Folio	Remarks

The final total of the share capital column must, of course, agree with the total share capital paid up. Where dividends are payable to a bank for credit of the shareholder, particulars may be inserted in the "address" column in red ink, or alternatively, an extra column provided.

The gross dividend, tax and net dividend must be entered in the appropriate columns and each sheet separately totalled, cross-cast and checked. A summary sheet, recording the totals of the separate sheets is prepared, totalled and checked, after which the dividend warrants are prepared.

Where arrears of preference dividends are paid for previous years, the rate of income tax to be deducted is the average rate during the period in which the profits were made, and not the average for the period in which the dividends accrued.

The Dividend Warrant

This is, in effect, a cheque, and is subject to the same statutory privileges as a cheque. It is, usually, printed specially, and bears a reference to the dividend so that it may easily be distinguished by the banker and charged to the special dividend account.

Every dividend warrant is accompanied by a statement in writing showing the following particulars:—

(*a*) The gross amount which, after the deduction of the income tax appropriate thereto, corresponds to the net amount actually payable.

(*b*) The rate and the amount of income tax appropriate to such gross amount.

(*c*) The net amount actually paid.

Dividend Pass Book

It is customary to arrange with the bank for a special "Dividend Account" to be opened for each dividend, and a transfer from the company's current account is made for this purpose. The pass book should be examined periodically and the paid warrants marked off on the dividend list. Any warrants unpaid at the end of six months should be transferred to an "Unclaimed Dividends Account" and should appear under that heading in the company's Balance-Sheet.

Lost Dividend Warrant

If a shareholder notifies the company that the dividend warrant has been lost or not received, payment of the warrant by the company's banker should be stopped. A duplicate warrant should be issued only against a letter of indemnity. Some companies charge a small fee for duplicate warrants to cover expenses of postage, etc.

Income Tax Certificate

The upper-half of the dividend warrant acts as a certificate of deduction of income tax; if this is lost any copy issued must be marked "Duplicate."

Dividend Mandates

Many shareholders desire their dividends to be paid to a bank for the credit of their account and a dividend mandate in the following form is commonly used:—

(Adress) .....

....., 19.....

To

The Directors,

The "A" Company, Limited.

Gentlemen,

Please pay all interest and dividends from time to time payable on the stocks and shares now or which may be here-

after, registered in my name in the books of your company to .....of ..... whose receipt shall be your full and sufficient discharge.

Yours faithfully,

(Signature).....

In the case of a joint account all holders must sign the dividend mandate.

When a large number of dividend mandates are received, authorizing payment of dividends to bankers, it is convenient to fill up only the upper halves of the dividend warrant, listing them separately and sending one cheque for the total amount to the head office of the bank concerned.

The detailed list will state the warrant number, the name of the shareholder, and the branch of the bank to with the proceeds of the warrant are to be paid.

CHAPTER XXVIII

MISCELLANEOUS.

Common Seal

Custody of the Seal and its Keys.—At the first board meeting of a newly-formed company, the directors should decide as to the custody of the seal and its keys. The seal, which is usually secured by two locks attached to a bolt passing through part of its mechanism, is generally kept at the company's registered office, whilst the key of one lock is kept by the chairman and the key of the other lock retained by the secretary. Duplicate keys of these locks may be held by different directors or, alternatively, lodged with the company's bankers.

Use of Common Seal.—The sealing of documents may be performed at board meetings, and this procedure is followed where the documents are few in number. Where, however, large numbers of documents, *e.g.* share certificates, have to be sealed, it is usually found more convenient to pass, at the board meeting, a resolution authorizing the seal to be affixed to certain documents and to arrange for the attendance (later) of certain directors to carry the resolution into effect.

Seal Book.—Although it is not prescribed by statute, a Seal Book or Register in the following form should be kept to provide an adequate record of the occasions upon which the seal is used and the disposal of the sealed documents.

Seal Register.

Date of Sealing	Folio in Minute Book for Authority	Particulars of Documents Sealed	Number of Documents Sealed	Names of Persons Sealing *(their own initials)*	Where Documents Placed	Remarks

Powers of Attorney

A Power of Attorney is written authority to one person (the attorney or donee) to act for, or on behalf of another (the principal or donor).

Their Scrutiny.—The principal is liable for all acts of his attorney within the scope of the authority delegated, hence when a power of attorney is exhibited by a donee as his authority to perform certain acts, e.g. execute transfers, great care must be observed in scrutinizing the powers and ascertaining that those acts are, in fact, authorized.

The first essential feature of the examination is to see that the name, address, description and signature of the donor agree with the company's records, the signature is duly attested and the document correctly stamped. Usually, there are two witnesses.

Their Scope and Extent.—There are two classes of powers of attorney: special and general. The former dele-

gates authority of perform one particular act or class of acts, whilst the latter more usually authorizes the donee to deal with the donor's entire business. Any limitations in the power must be carefully noted.

It must be ascertained whether the attorney has power to buy shares, sell shares, receive dividends, etc., and power to appoint a substitute. These documents usually contain a clause empowering the donee "generally to do all such acts as may be necessary or expedient for carrying out the powers hereby given," but any such clause merely confers authority to do unspecified acts for the attainment of specified acts. Thus, a power to buy shares does not necessarily confer power to sell shares.

Their Duration and Revocation.—It is a common practice for powers of attorney to be expressed as "irrevocable for one year from the date thereof," but such documents continue in force until revoked.

It is customary for the instrument to be returned to the principal upon revocation, hence the possession of the document by the donee is *prima facie* evidence that it is still in force. It is the duty of the principal to communicate the fact of revocation to third parties who have dealt with the attorney. Where, however, lapse of time or other indications give rise to doubts, re-inspection of the instrument and declaration that it is still in force should be demanded.

Entries in Register.—Particulars of the instrument, date, names of donor and donee, and the nature of the powers delegated should be entered in the shareholder's account in the Share Ledger and in a Register of Powers of Attorney. After examination and registration, the power of attorney

is endorsed with the fact. A specimen ruling of the Register of Powers of attorney is given below:—

Register of Powers-of-Attorney.

No.	Date of Registration	Shareholder		Date of Power-of-Attorney	Description of Powers Delegated	Attorney		By whom Left	Reg. of Members Folio	Remarks.
		Name	Address			Name	Address			

PART III

POSITION, POWERS, DUTIES & LIABILITIES

OF

COMPANY SECRETARIES

CHAPTER XXIX.

APPOIN'TMEN'T

The first secretary of a company is commonly named in the articles, and a statutory declaration perior to incorporation of the company by a secretary named in the articles that all registration requirements have been complied with is accepted by the Registrar under section 24 of the Act. But a clause thus naming the secretary does not constitute a contract between the secretary and the company and he would not be able to sue the company, if another person were appointed. (*Browne v.La Trinidad* (1887) 37 Ch.D.1).). But where, in conformity with such an article, a person has in fact acted as a secretary, without the company entering into a written agreement with him, and he is afterwards dismissed, an action for damages may lie against the company. In that case the Court will presume a contract of employment, and will consider the wording of the articles (and other evidence tendered) in order to determine the terms of that employment. It is, however, always preferable that the secretary who has been acting *pro tem* in the preliminary stages of the company's existence, whether named in the articles or not, should see that, at the first meeting of the board of directors, after incorporation, his appointment is made by a resolution. The resolution may be in one of the following forms:—

(i) " *Resolved that Mr. S. G. of ..... be, and he is hereby, appointed secretary of the company the appointment to be subject to.....notice on either side and the remuneration to be Rs.....per month,"or*

(ii) " *Resolved that the appointment of Mr. S. G. of .....as secretary of the company be, and the same is, hereby confirmed, the appointment to be,.....etc.*"

In addition to this resolution, which in itself sufficiently secures the secretary it is the usual practice to embody the terms, with other clauses, in a written agreement.

A paid secretaryship being an office of profit, the office of a Director who has been appointed a secretary, without the sanction of the company in general meeting, would be vacated under Sec.86 1 (e) of the Act (*British Asbestos Co.* v. *Boyd* (1903) 2 Ch. 439).

It has been further held that an officer (which includes the secretary) who accepts an incompatible office, by doing so *prima facie* vacates his original office i.e. the one he already held.

So if the secretary of a company is elected a director, he will cease to be a secretary (*Iron Ship Coating Co.* v. *Blunt* (1868) L. R. 3 C. P. 484), unless he ceases to receive the salary of his post as a secretary.

Limited Company as Secretary.—A limited company may be appointed as secretary if the memorandum of the company proposing to act as secretary gives it power to do so. This is particularly so in India where the Managing Agents (usually private companies) frequently either *assume the garb of secretaries* under the title of 'Secretaries' Treasurers and Agents' or provide it in the articles of the company under their management that "the duties of the Managing Agents shall include the duties usually performed by the secretary of the company".

Form of an Agreement for Appointment of Secretary.

AN AGREEMENT made the ..... day of ..... BETWEEN the .... Company, Limited, whose registered office is situate at.....(hereinafter called "the said Company") of the ONE PART and Mr. B. of ....., (hereinafter called "the Secretary") of the OTHER PART:

WHEREBY IT IS AGREED AS FOLLOWS:—

1. The said Mr. B. shall be the secretary of the said company for a term of.....years, to be computed from the date hereof.

2. During the continuance of this agreement, Mr. B. the secretary, unless prevented by ill-health, shall devote the whole of his time, attention and abilities to the business of the company and shall well and faithfully serve the company and use his utmost endeavours to promote the interests and welfare thereof.

3. Mr. B. the said secretary shall obey all lawful orders from time to time of the Managing Agents (*or Managing Director or General Manager, as the case may be*) and of the Board of Directors of the Company and shall perform such duties as the Managing Agents (*or Managing Director or General Manager, as the case may be*) and|or the Board of Directors shall impose upon him from time to time and in particular he shall look after the general office work and the Secretarial correspondence and under the instructions from the Managing Agents (*or Managing Director or General Manager, as the case may be*) and or from the Board of Directors, exercise general supervision over the affairs of the company including accounts, statutory books, agency work, etc. He shall also call meetings of Directors

as may be necessary or by directions of the Chairman of Board of Directors or any of the directors. He shall call the meetings of members under the Board's resolution as required and get the proceedings of all meetings of members and directors recorded in proper minute books with proper divisions and index, see that proper documents are duly sealed as required by regulations and that the necessary documents are duly stamped and filed from time to time according to the requirements of the Indian Companies Act or any statute for the time being replacing, extending or modifying the same. The Secretary shall also look after the incidents of applications, allotments and calls on shares or debentures as well as transfers and forfeiture of shares and see that the procedure as laid down by regulations is strictly adhered to and followed and in general attend to all work falling within the sphere of Secretarial department in strict conformity with Law, the Memorandum and the Articles of Association and other Regulations of the company and obey and faithfully carry out instructions given to him from time to time by the Managing Agents (*or Managing Director or General Manager, as the case may be*), and/or the Board of Directors of the Company.

4. As remuneration for his services Mr. B. the said secretary shall be entitled to a salary of Rs.....per mensum, the said salary commencing from the date hereof.

5. In addition to his salary aforesaid Mr. B the Secretary, during the tenure of his office, shall be entitled to a commission of.....per cent. on the profits made during the financial year or other period comprised in the accounts submitted to each ordinary general meeting of the company.

6. Mr. B. the Secretary, shall not either before or after the determination of this agreement disclose to any person whatsoever any information relating to the company or its documents or its customers or its secrets of which he shall become possessed while acting as secretary.

7. Either of the parties to this agreement may at any time determine this agreement by giving to the other not less than.....Calendar months' notice in writing.

8. Mr. B. the Secretary shall be entitled to..... weeks' holidays in every year to be taken at such time as the Board of Directors of the company shall deem most convenient.

9. In case of any dispute or difference arising between the parties hereto as to the amount of remuneration or other moneys payable under any of the foregoing stipulations or as to the validaty of any notice to be given hereunder or as to the construction of these presents or as to any other matter or thing arising hereunder in the course of the employment of Mr. B. the said Secretary such dispute and matter in difference shall be referred to two Arbitrators one to be appointed by each party in difference or to an Umpire to be chosen by the Arbitrators before entering on the consideration of the matters referred to them and every such reference shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1899, or any statute for the time being replacing extending or modifying the same.

IN WITNESS WHEREOF the Common Seal of the ..... Company, Limited has hereunto been affixed in presence of two directors of the said Company pursuant

to a resolution of the Board of Directors passed at a meeting of the Board held on the ..... day of ..... 19....., and the signatures of the said secretary Mr. B. have been hereunto set and subscribed the day and year first above written.

Seal of the Company.

Witnesses:— ..... } *Directors.*
.....

Witness:—

B.

Secretary.

CHAPTER XXX.

DUTIES

The secretary will, as soon as possible, after his appointment familiarize himself with the contents of Memorandum and Articles of Association, the two documents which define the nature of the business which the company is by law entitled to carry on, and set out the regulations for the control of the undertakings, rights, duties, powers and liabilities of its members and officers. He will also acquaint himself with the financial position of the company, as shown by its accounts for recent years; the methods of accountancy used; the personnel and duties of the staff; the requirements of the business; and above all, the ideas of the chairman and directors of the company.

The duties of a company secretary may conveniently be grouped into three classes, according as he is called upon to act (1) as a statutory officer with certain duties to perform under the statute; (2) as 'the servant of the board'; (3) as the official medium of communication between the company and the outside world. His *statutory duties only* will be dealt with in this chapter.

STATUTORY DUTIES.

Under Companies Act.

(*i*) The secretary as an officer of the company is practically responsible for giving certain notices to, filing certain documents and returns with and reporting certain proceedings to the

Registrar. A list of such notices is given below:—

Documents and Notices required by the Act to be filed with the Registrar of Companies.

SECTION.	DOCUMENTS.
15 (1)	Copy of Order of Court confirming alteration in company's objects together with copy of memorandum altered.
15 (2)	Copy of Order of Court confirming change of registered office from one province to another.
22	Memorandum and articles on registration of a new company.
24 (2)	Declaration by advocate, etc. of compliance with requirements of Act as to registration.
32 (3)	Annual List of Members and Summary together with a certificate about their correctness.
32 (4)	*Private company* to send with the Annual List and Summary a certificate signed by a director or other officer that the company has not issued during the period of the return any invitation to the public to subscribe for its shares or debentures.
39	Notice of rectification of Register of Members.
41 (2)	Notice of situation of office where branch register of members is kept, and of any charge therein.
50 (4)	Notice of exercise of power to sub-divide or cancel shares.
51 (1)	Notice of consolidation or division of share capital, conversion of shares into stock, etc.
53 (1)	Notice of increase of share capital or of members.

SECTION.		DOCUMENTS.
54	(2)	Certified copy of Order of Court confirming reorganization of share capital.
61	(1)	Order and Minute of reduction of share capital.
66A	(5)	Copy of Order of Court regarding variation of shareholders' rights.
72	(2)	Notice of situation of registered office and of any change therein.
77	(5)	Statutory Report (*a private company need not file the same*).
82	(1)	A printed or typewritten copy of special or extraordinary resolutions certified by an officer.
84	(1)	Consent in writing to act as a director, and contract to take and pay for qualification shares or an affidavit stating that such shares already stand in his name (*a director of a private company need not file these*).
84	(2)	List of persons consenting to be directors of the company (*a private company need not file the same*).
87	(2)	Return in prescribed form containing the particulars specified in the register containing names and addresses of directors, managers and managing agents and of any change therein.
92	(2)	Copy of prospectus signed by directors or proposed directors.
98	(1)	Statement in lieu of prospectus as above.
103	(1)	Verified declaration by secretary or director of compliance with conditions for a company to commence business.

SECTION.	DOCUMENTS.
104 (1) (a)	Return as to allotment of shares.
104 (1) (b) & (2)	Verified copy of contract with prescribed particulars relating to shares allotted as fully or partly paid up otherwise than in cash with return of allotment.
105 (1) (b)	Statement disclosing amount or rate of underwriting commission where shares are not offered to the public.
109 (1), 110	Particulars of mortgage or charge together with instrument by which the mortgage or charge is created or a verified copy thereof.
109A (1)	Prescribed particulars of charge and certified copy of instrument creating charge where property is acquired by company as being subject to a charge requiring registration under the Act.
110, 116	Particulars in case of series of debentures entitling holders *pari passu*.
111	Particulars in case of commission, etc., on debentures.
116 (3)	Particulars of modification of terms, etc. of charge.
118 (1)	Notice of appointment of Receiver.
119 (1)	Accounts of Receiver and notice on his ceasing to act as Receiver.
121 (1)	Intimation of payment or satisfaction of charge.
134	Three copies of Balance-sheet signed by manager or secretary (*a private company need not file this*).
153 (3)	Copy of order sanctioning compromise.

SECTION.	DOCUMENTS.
153A (3)	Certified copy of order sanctioning a scheme of reconstruction or amalgamation.
154 (1)	Prospectus or a statement in lieu of prospectus on conversion of private company into public company.
255	Documents relating to registration of joint stock Companies under part VIII.
277 (1)	Documents relating to foreign companies.
277 I	Declaration by a banking company verified by affidavit *re* minimum on shares allotted.

(*ii*) He is also responsible for keeping certain statutory books, allowing inspection of the same to members and others and supplying copies thereof. These are enumerated below:—

Registers, Books, Copies etc. required to be maintained in the Company's Office under the Act.

SECTION.	DOCUMENTS.
31 (1) & 36	Register of Members. *Open to public inspection.*
31A & 36	Index of members where their number is more than fifty. *Open to public inspection.*
32 (3)	The Annual List of Members and Summary to be contained in a separate part of the Register of Members.
41, 42	British Register of Members (Duplicate).
83 (1)	Minutes of proceedings of general meetings and of Directors' meetings.

SECTION.	DOCUMENTS.
87 (1)	Register of names and addresses of directors, managers, managing agents etc. *Open to public inspection.*
91A (3)	Register containing particulars of contracts in which a director is directly or indirectly interested. *Open to members' inspection.*
91C (1)	Contract appointing manager or managing agent in which a director is interested. *Open to inspection of shareholders.*
91D	Memorandum in respect of contract by agents in which company is undisclosed principal.
117	Copies of instruments creating mortgages or charges. *Open to inspection of members and creditors.*
123 (1) & 124 (1)	Register of mortgages and charges. *Open to public inspection.*
125 (1)	Register of debenture-holders.
130 (2)	Books of account. *Open to inspection of directors.*
131 (3)	Copy of audited balance-sheet and profit and loss account to be deposited at company's registered office. *Open to inspection of members.*
136 (1) & (2)	Half-yearly statement to be published by banking companies, etc., and to be displayed in company's registered office and in every branch office.

Under the Income-tax Act—The secretary will be treated as 'Principal Officer' (Sec. 2 (1) of I. T. Act) and as such it will be his duty—

(*i*) to submit the Return of Income under Section 22 (1) of I. T. Act;

(*ii*) to deduct income tax on 'salaries' paid by the company to its employees (Sec. 18 (2) of I. T. Act). In case of default he will be personally liable to pay the same to the Income-tax Authorities;

(*iii*) to furnish to Income-tax Officer a return in prescribed from in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 5,000 (Sec. 19-A of I. T. Act); and

(*iv*) at the time of distribution of dividends, furnish to every person receiving a dividend a *certificate* to the effect that the company has paid or will pay income-tax on the profits which are being distributed and specify such other particulars as may be prescribed (Sec. 20 of I. T. Act).

Under the Indian Stamp Act—It will be the duty of the Secretary to see that all documents such as share certificates, share warrants, letters of allotfent, debenture deeds, mortgages and charges, hundies, promissory notes, conveyances, etc. are duly stamped with duties prescribed and in the manner laid down under the Indian Stamp Act.

Section 62 (2)' of the Indian Stamp Act expressly mentions the secretary of a company as one of the officers of the company liable to be punished with fine for issuing

share warrants without proper stamp. And the same will hold good for issuing or executing other documents, mentioned above, not duly stamped.

A summary of important statutory duties of a secretary is given below, those marked thus* with asterisks not applying to private companies:—

Various Statutory Duties of a Secretary under the Indian Companies Act, 1913.

1. To issue every copy of the memorandum of association after date of alteration with such alteration (Sec. 25 A);

2. to keep in one or more books a register of members and enter therein the necessary particulars (Sec. 31);

3. to keep an index of the names of members and to make necessary alterations therein (Sec. 31 A);

4. to prepare and file Annual List of Members and Summary with particulars (Sec. 32);

5. to see that a notice of refusal to register transfer of shares is duly sent within 2 months of the lodgement of transfer (Sec. 34);

6. to grant inspection and/or copy of register of members to members gratis and to any other person on payment of Re. 1/- (Sec. 26).

7. to see that the company neither purchases nor gives loan for purchase of its own shares (Sec. 54 A);

8. to publish amounts of subscribed and paid up capital also wherever a notice or other publication contains a statement of the amount of authorised capital (Sec. 75);

9. to see that the name of the company is affixed or painted outside of every office or place of business of the Company and on its Seal (Sec. 74 (1));

10. to hold a General Meeting at least once in a year not more than 15 months after the last preceding General Meeting (Sec. 76);

*11. to hold a Statutory Meeting within 6 months of the commencement of business, and to send a Statutory Report to every shareholder at least 10 days before the meeting (Sec. 77).

12. to file with the Registrar a copy of the special or extraordinary resolution (Sec. 82);

13. to embody in or annex to the articles, copy of special resolution and to forward the same in print to a member at request (Sec. 82);

14. to grant inspection and furnish copy of minutes of proceedings of general meeting to a member (Sec. 83);

15. to request director not to be a party to making loan or guaranteeing loan made to a director or to a firm of which such director is a partner or to a private company of which such director is a director (Sec. 86);

16. to keep the register of directors, and to file a copy thereof with the Registrar with notice of any change from time to time and not to refuse inspection thereof (Sec. 87);

*17. to request director not to be a party to making loan or guaranteeing loan made to managing agents etc. (Sec. 87D);

18. to request director not to be a party to making loan to or guaranteeing loan made to any company under management of the same managing agents (Sec. 87E);

19. to request director to disclose to his co-directors any interest that he may have in any contract or arrangement with the company (Sec. 91A);

20. to keep proper register of contracts and arrangements with the Company in which directors are interested and grant inspection of the same (Sec. 91A);

*21. to request director to refrain from voting on a resolution if interested therein as a director and to refrain from being counted in the quorum of such a meeting (Sec. 91 B);

22. to send an abstract of the contract for the appointment of a manager including managing agent or any variation in any existing contract with such parties to every member (Sec. 91 C);

*23. to issue prospectus only after filing a copy thereof with the Registrar (Sec. 92);

24. to issue form of application for shares or debentures together with prospectus (Sec. 96);

*25. to see that directors issue prospectus containing particulars strictly in compliance with Section 93 of the Act (Sec. 97);

26. to see that directors refund the application money within 180 days after the issue of the prospectus if shares are not allotted to the applicants (Sec. 101);

*27. to see that directors do not to proceed to allotment of shares unless the minimum subscription has been reached (Sec. 101);

28. to see that directors do deposit and keep deposited all application moneys (on shares) in a Scheduled Bank until returned or certificate of commencement obtained (Sec. 101);

*29. to see that business is not commenced before certificate has been granted by the Registrar (Sec. 103);

30. to file return of allotment within one month of allotment (Sec. 104).

31. to see that certificates of shares or debentures are issued within three months of allotment (Sec. 108);

32. to issue debentures etc. with copy of certificate of registration endorsed thereon (Sec. 122);

33. to keep a register of mortgages or charges (Sec. 123) and to grant inspection of instrument creating a mortgage or charge and not to refuse a copy thereof (Sec. 123 and 124);

34. to keep or to have kept proper books of account (Sec. 130);

35. to attach directors' report to Balance Sheet (Sec. 131 A);

36. to lay before company and issue* balance sheet and profit and loss account duly complying with requirements of Sections 131 to 133 of the Act (Sec. 133);

*37. to see that Balance Sheet and Profit and Loss Account after having been laid before the general meeting are filed with the Registar within the prescribed time (Sec. 134).

38. to see that business with fewer than 7 in case of public company or less than 2 in case of private company for more than 6 months is not carried on (Sec. 147);

39. to file with Registrar prospectus or statement in lieu of prospectus on conversion of private company into public company (Sec. 154).

CHAPTER XXXI.

LEGAL POSITION OF THE SECRETARY

In *Newlands v. National Employment Accident Association* (1885) 54 L. J., Q. B. 428, Lord Esher said, "A secretary is a mere servant; his position is to do what he is told, and no person can assume that he has any authority to represent anything at all: nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further enquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contract." The same doctrine was enunciated in *Barnett v. South London Tramways* (1887) 18 Q. B, D. 815, and conveniently followed by the courts and its logical consequences appear in the House of Lords decision in *Whitechurch (George) Ltd. v. Cavanagh* (1902) A. C. 117, where Lord Esher's Dictum was approved by Lord Macnaughten. To put it briefly, the secretary as such has no status or power given by law but the scope of his duties and rights is determined by the Agreement, if any, between him and the company, by the Articles of Association of the company and by the Resolution of its Directors. He has responsibility in plenty, but he is an agent only, and cannot act for the company without authority from the Company or its directors.

POWERS.

Prima facie the secretary has no authority or power to—

(*i*) bind the company by contract or to make representations as to the company's affairs, so

as to induce people to take shares (*Barnett v. South London Tramways*—Supra);

(*ii*) to register a transfer until it is passed by the company's directors (*Chida Mine v. Anderson* (1905) 22 T. L. R. 27; *Indo-China Steam Navigation Co.* (1917) 2 Ch. 100);

(*iii*) to convene a general meeting, unless authorised by the board of directors (*Haycraft Gold Reduction & Mining Co.* (19) 2 Ch. 230; *State of Wyoming Syndicate* (1901) 2 Ch. 431);

(*iv*) to strike a name off the Register of Members (*Wheatcroft's Case* (1873) 29 L. T. 324); *Indo-China Steam Navigation Co.*—Supra);

(*v*) to commence proceedings in a suit in the name of the company (*Daimler Co. v. Continental Tyre & Rubber Co.* (1916) 2 A. C. 307).

Notes:—(1) The knowledge of mere official such as the secretary, would only be the knowledge of a company if the thing of which the knowledge is secured is a thing within the ordinary domain of the secretary's duties. (*Houghton & Co. v. Nothard Lowe & Wills*—Supra).

(2) It has been held that where the same person is the secretary to two companies, knowledge acquired by him for one company is not to be treated as notice to the other, unless it was his duty as secretary to the first company to give notice to the second (*Fenwick, Stobart & Co.* (1902) 1 Ch. 507).

A secretary should act on the advice and instructions of the board, not of a single director, unless, of course,

power to deal with certain matters has been given by the board to a single director.

Generally speaking, the secretary can send out notices according to directions of the Board of Directors, attend to general correspondence and particularly to correspondence relating to filing of returns with Registrar of Companies or what is known as secretarial correspondence, to look to transfers, and attend all meetings of the directors, shareholders and creditors and maintain proper minute books as well as company books relating to shares and their transfers (*Cairney v. Back* (1906) 2 K. B. 746; *Betts v. Macnaghten* (1910) 1 Ch. 430).

The secretary can sign any document or proceeding requiring authentication by the company (Sec. 150). He can "certify a transfer, but if he does so fraudulently the company will not be liable" (*Whitechurch (George) Ltd. v. Cavanagh* (1902) A. C. 117; *Kleinwort Sons & Co. v. Associated Automatic Machine Corporation* (1934) 50 T. L. R. 244).

Signing Under Authority:—

The Articles of Association of companies not infrequently prescribe that the secretary shall countersign deeds sealed by the company and cheques drawn on its behalf. Even where not obligatory, this is an advisable course to adopt.

In such cases the secretary should be very careful how he signs documents on behalf of the company, as he may, by not observing proper precautions, render himself personally liable. When the Secretary is given authority by his Directors to make and sign binding contracts on behalf of the company (particularly if he is asked to sign without two

directors) he should make sure that the Articles of Association give the Directors power to delegate their authority, and that such delegation has been expressly made either by a resolution of the board or otherwise or can be reasonably implied from the manner in which the business of the company is conducted. It is very desirable that cheques, promissory notes, and bills of exchange should show on their face that they are drawn, made accepted or endorsed on behalf of the company; otherwise an attempt may be made to hold him personally liable. An India—rubber stamp with words "For The.....Company, Limited" is generally kept at the office to be used as required. Bills should never be accepted unless they are directed to the company.

Shortly stated to avoid personal liability the following conditions should be observed:—

1. The memorandum and articles must empower the company to draw bills, make notes, etc. The power is usually expressly conferred, but it may be implied.

2. The directors and secretary must be authorised to sign on behalf of the company. This power also is usually contained among the powers expressly conferred on the directors.

3. The words "Limited must appear after the company's name, which must be precisely stated.

4. The words "for" or "for and on behalf of the Company, Limited" must appear in close proximity to the signatures.

5. The directors and secretary must sign in a representative capacity, i.e., as directors or secretary.

It may be added that contracts thus entered into on behalf of a company may be varied or discharged in the same manner as they can be made.

As far as India is concerned, where the Managing Agents assume the garb of secretaries, under the title of "Secretaries, Treasurers or Agents" or it is otherwise provided in the articles that they shall also perform the duties usually performed by a secretary their exact legal position will largely depend on their agency agreement with the company, which agreement generally embraces multifarious rights, powers and duties. But the criminal liability of a person (for fraud, misrepresentation, etc.,) who, in the employment and on behalf of the Managing Agents acts as a secretary for the company or companies under their management *will not be reduced* by such an arrangement.

CHAPTER XXXII

LIABILITIES

As an Agent.—The secretary incurs no liability, generally speaking, as the agent or servant of the directors but he must be careful not to make any representations or to act outside the scope of his secretarial duties, and should confine himself strictly to matters arising out of the business of the company. Acting within these limitations, honestly and to the best of his ability, he can incur no liability to third persons. But in such dealings he must make it clear that he is acting as agent or servant; by contracting in his own name without reference to the company, or with reference to the company but omitting the word "Limited", he may become personally liable.

The governing principle of law applicable where it is attempted to bring home responsibility to a company for its secretary's fraud may be thus stated from the headnote in the report of the leading case of *Lloyd v. Grace, Smith & Co.* (1912) A. C. 716. The head note to that case reads: "A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent." It will be seen, then, that the guiding principle in cases of wrongs committed by a servant or agent is not whether the servant or agent was acting for *his master's benefit*, but whether he was acting *in the course of the master's business*, i.e., within the scope of his authority.

Secret Commissions etc.—Needless to say that as an agent or servant of the company, the secretary is under the same obligation as any other servant or agent to refuse

commissions on bills from parties having dealings with his company. Should he accept *presents, bonuses, secret commissions or bribes* he can be compelled to account for them to the company with interest (*McKay's case* (1876) 2 Ch. 1), not to speak of his criminal liability to heavy punishment.

Criminal Liability.—Under section 235 of the Act he may be rendered liable to pay damages in a winding up if he is found guilty of *misfeasance,* misapplication of property etc.

Under Section 236, he is liable to heavy punishment for *falsifying any books or documents* of the company. Under section 237, if a delinquent, he may be criminally prosecuted for any offence against the company and under Section 238, he is subject to heavy punishment for *false evidence* upon any examination upon oath authorised under the Act or in any affidavit, deposition or solemn affirmation, in or about the winding up of the company or otherwise in or about, any matter arising under the Act. Under Section 238A, he is criminally *liable* to be prosecuted for *various offences* mentioned therein.

And finally under Section 282 of the Act he is criminally liable for *making a false statement in any return, report, balance-sheet etc., of the company.* A secretary who has in fact acted as a manager is liable for negligence in preparing balance-sheets and accounts whereby he has caused dividend to be paid out of capital.

Although the secretary must obey orders of his directors his position nevertheless involves an amount of personal responsibility. *The obligation to obey orders, however, would not absolve him from the consequences of doing that*

which he knows to be a wrong or fraud upon other parties. So long as he obeys orders of the directors, the secretary is not liable, *but if he is a party to a fraudulent act he is personally liable (Dinabandhu v. Abdul Latif (1922) 27* C.W.N. 18).

Penalties.—This chapter would be incomplete without reference to various panalties which a secretary may incur for breach of various provisions of the Act which affect him as an officer of the company. By Section I (1) (II) of the Act "Officer" includes amongst others the *secretary* of the company also. There are now (after amendment of the Act in 1936) very few requirements of the Act which are not fortified with penalties in case of default. Fines are in many cases imposed on the company and upon any "officer who is in default" and in some cases, imprisonment is mentioned. These defaults with relative provisions and sections of the Act are fully set out in tabular form in Appendix I of this book.

Relief from Liability.—Under Section 281 of the Act which applies to officers of a company and, therefore, includes *the secretary also,* if it appears to the Court in the course of any proceedings against directors and other officers that he has acted honestly and reasonably and that he ought fairly to be excused, the Court may relieve him from his liability for negligence, default, breach of trust etc. The Secretary, under the section as now amended, apprehending any such liability, can apply to the Court for such relief even when the company is a going concern.

CHAPTER XXXIII

TERMINATION OF SERVICE

The appointment of secretary is made either by resolution of the board, stating the terms of remuneration and notice necessary to terminate the engagement, or by resolution followed by a written agreement embodying these and other conditions. The period of the engagement may be either fixed, e.g., for five years, or indeterminate. Where the period is a fixed number of years the secretary cannot be dismissed except for fraud or gross misconduct or for any of the reasons given below (*see infra*); but if arbitrarily dismissed he can sue the company for damages for wrongfull dismissal or prove for damages in the winding up. In the latter event he will be entitled to recover the amount of his salary for the unexpired term of the engagement or for such amount as he may be entitled to receive under the agreement. For example a clause in the agreement providing that "in the event of the said A B being at any time deprived of or removed from, his office for any other cause than gross misconduct the directors shall pay to him as compensation for loss of office a sum equal to three years' salary, "would entitle the secretary to prove for three years' salary. But he can not prove for commission (*Re English and Scottish Marine Insurance Co., Ex p. Maclare (1879) 5 Ch: App: 737*).

In the absence of a contract by the company as to term of office, the secretary, like any other servant is entitled to a reasonable notice of dismissal or to compensation in lieu thereof. It has been held, that as an important officer, he is entitled to a notice of six months if he has been in service for a long period, if not about three months' notice

would be considered sufficient (*African Association Ltd. & Allen (1910) 1 K.B. 396*).

But there are certain things for which he, like any other employee, may be dismissed summarily and without notice, for instance, wilful disobedience to any lawful order of the company or its directors, fraud or gross misconduct, incompetence or permanent disability. It has been *held* that the resolution to dismiss a secretary even if defective for want of proper notice, is a matter within the powers of the company and the secretary cannot treat it as void (*Tanjore Permanent Fund v. Sadashiv (1926), 50 M.L.J. 479*).

As an employee or exemployee of the company, the secretary may generally be restrained by injunction from revealing *trade secrets* (*Robb v. Green* (1895) 2 Q. B. 315). The appointment by Court of a Receiver and Manager in Debenture action (*Reid v. Explosives Co.* (1887) 19 Q.B.D. *264*) operates as a dismissal of the secretary like other employees of the company, and so does the making of a compulsory winding up order (*Chapman's case (1866) L.R. 1 Eq. 346*). The appointment of Receiver under Debenture-Trust Deed under powers reserved in same (*Robinson Printing Co., Ltd. v. Chick Ltd.* (1905) 2 Ch. 123) or a resolution to wind up voluntarily (*Midland Counties District Bank v. Attwood* (1905) 1 Ch. 357) does not operate as a notice of dismissal, so far as the secretary is concerned. But in *Reigate v. Union Manufacturing Co.* (1918) 1 K.B. 592, Scrutton L.J., referred to the Midland Countries Bank case and said: "If it means that a resolution for voluntary winding up is never to discharge the servants of a company I cannot agree with it. It seems to me that it may or may not be a discharge of the servants according to the facts of the particular case."

Damages.—In both the cases (of compulsory winding up and appointment by Court of a Receiver), the Secretary, like any other employee, is entitled to damages from the company for wrongful dismissal. In any claim for damages for wrongful dismissal, the damages recoverable are those actually sustained. If on the appointment of a liquidator in a compulsory winding up, the secretary continues by agreement to act for the liquidator at a salary, his right to damages will be qualified by the remuneration received. If, for example, he was entitiled to a month's salary in lieu of notice and the liquidator engages him for a month at the same salary, the secretary will have sustained no damage by his dismissal. The same rule applies if the secretary agrees to work for a receiver appointed by the Court in a debenture holder's action, or for a receiver appointed by the debenture holders themselves (under power in the trust deed) as agent for themselves but not as agent for the company; if the secretary is employed at the same salary which he would have received, he has sustained no damages and can get none in an action against the company for wrongful dismissal.

Again, where the secretary is wrongfully dismissed whilst the company is a going concern the same rule will he applicable. If, for example, the secretary sues for three months' salary in lieu of notice, and during the three months he obtains a fresh engagement, his claim for damages will be *pro tanto reduced* by the amount of salary received.

The remedy of either party for breach of the above agreement would be an action for damages. Hence, if A.B. refuses to discharge his secretarial duties or the company improperly dismisses him, the Court will not compel A B to act or the company to employ him. In other words, specific

performance of the agreement will not be ordered by the Court.

Preferential Creditor.—Sertion 230 of the Act gives preferential rights as regards the salary of any "clerk or servant" in respect of services rendered to the company during two months next before the date of the winding up, not exceeding Rs. 1,000 for each clerk or servant. The date in this case is the date of the resolution by the company or of the Order of the Court, as the case may be.

A secretary may be a "clerk or servant" so as to be entitled to preferential payment under this section, but if it is not his sole employment and he does not give his whole time to the company or performs his duties by his deputy, he is not a "clerk or servant" (*Cairney v. Back (1906) 2 K.B. 746; Beeton & Co.* (1913) 2 Ch. 279). The secretary can only claim preferentially for "services rendered" and not for salary in lieu of notice, for which he will rank as an ordinary creditor (Re *Havana Exploration Co.* (1916) 85 L.J. Ch. 174).

Lien over Company's Books.—A question often raised is as to the right of a secretary, dismissed from his employment, to retain books and papers belonging to the company, by way of lien. No doubt a person employed to do work upon books or papers may successfully set up a right of retention or lien for unpaid fees, but the secretary is in a different position. The registers, books and papers come into his hands as a servant of the company, and not under any special contract. He is merely a custodian on behalf of the company, and does not hold them in the professional capacity like that of an accountant engaged by special contract (*Barnton Hotel Co., Ltd. v. Cook* (1899) 36 S.L.R. 928).

APPENDICES

APPENDIX I

Offences Under the Indian Companies Act VII of 1913.

NOTES:—(i) "Officer" includes any Director, Managing Agent, Manager of Secretary.

(ii) Penalty wherever imposed upon Directors or other officers, is only when they knowingly permit or wilfully authorise default

Section	Offence	Offender	Maximum Penalty.
25A (2)	Issuing copy of memorandum or articles not in accordance with the alteration.	Company and Officer.	Rs. 10 per copy issued.
31 (2)	Failing to keep a proper Register of Members.	do	" 50 a day
31A (3)	Failing to keep an Index of the names of Members or to make necessary alterations therein.	do	" 50
32 (5)	Default in making and forwarding to Registrar Annual List of Members and Summary.	do	" 50 a day

Section	Offence	Offender	Maximum Penalty.
34 (5)	Default in sending notice of refusal to register a transfer of shares or debentures.	Company and Officer.	Rs. 50
36 (3)	Refusing inspection or default in sending a copy of Register of Members and Index.	do	,, 20 a day
47 (2)	Omission of appropriate entry in Register of Members when share warrant issued.	do	,, 50 ,,
51 (2)	Omission to give notice to Registrar of Consolidation of shares, etc.	do	,, 50 a day
53 (3)	Failure to file with Registrar notice of Increase of Capital, etc.	do	,, 50 ,,
54A (3)	Purchase, or Loan by company for purchase of its own shares.	do	,, 1,000

62	(2)	Failure to embody in copy of memorandum Minute of Order sanctioning Reduction of Capital.	Company and Officer.	Rs. 10 per copy issued.
64		Concealment or abetment to conceal the name of creditor entitled to object to reduction of Capital etc.	Officer.	One year's imprisonment and or fine
66A	(5)	Default in sending copy of order under Sec. 66A to Registrar within 15 days after service thereof.	Company and Officer.	,, 50
70	(3)	Omission to notify that the liability of directors is unlimited.	Director, proposer, Officer.	,, 1,000 and damages.
74	(1)	Failure to publish Name of company on outside of every office, etc.	Company and Officer.	,, 50 a day
74	(2)	Issuing bills of exchange, hundis etc. without mentioning therein the company's name.	Officer.	,, 500 and personal liability on bills, etc.
75	(2)	Omission to publish Subscribed and Paid up capital along with Authorised Capital.	Company and Officer.	,, 1,000

Section	Offence	Offender	Maximum Penalty.
76 (2)	Default in holding Annual General Meeting.	Company and Officer.	Rs. 500
82 (4) (6)	Default in filing with the Registrar copy of Special or Extra-ordinary Resolution.	do	,, 20 a day.
82 (5) (6)	Omission to forward to members on request special resolution or to embody same in copy of articles.	do	,, 10 per copy issued.
83 (6)	Refusing inspection or default in furnishing copy of minutes of proceedings of general meeting.	do	,, 25 a day.
87 (4)	Default in keeping proper Register of directors, etc. or in sending return thereof or of change therein to Registrar or refusing inspection thereof.	do	,, 50

87E	(1)	Loan to or by companies under same management.	Director or Officer party thereto.	Rs. 1,000 and liability for amount unpaid
91A	(4)	Default in keeping Register of Contracts where directors are interested or refusing inspection thereof.	Officer.	,, 500
91C	(2)	Omission to disclose to members a contract appointing a manager or managing agent.	Company and Officer.	,, 1,000
92	(5)*	Issuing Prospectus without filing a copy with Registrar.	Company and Officer issuing.	,, 50 a day
96	(2)	Issuing Form of Application for shares or debentures except with proper prospectus.	Person issuing.	,, 500
97	(1)*	Issuing prospectus not in accordance with Sec. 93.	Person issuing.	,, 50 a day.
101	(2C)	Default in keeping application money in a Scheduled Bank.	Director or Person in default.	,, 500
103	(5)*	Commencing business or exercising borrowing powers prematurely.	Person responsible.	,, 500 a day.

Section	*Offence*	*Offender*	*Maximum Penalty.*
104 (3)	Omission to file with Registrar Return as to Allotment of Shares.	Officer.	Rs. 500 a day.
105A (3)	Omission to mention particulars of discounts in prospectus and balance sheet.	Company and Officer.	,, 50
105B (2)	Omission to mention in balance sheet the date or period of redemption or of the notice to redeem Redeemable Pref. Shares.	do	,, 1,000
108 (2)	Failure to issue certificate of shares or debentures within 3 months of allotment unless otherwise provided.	do	,, 50 a day.
109A (2)	Default in registering charge on property acquired subject to charge.	do	,, 500

119	(3)	Default by Receiver in filing accounts with Registrar or failing to mention in documents issued by company or Receiver that Receiver has been appointed.	Company, Officer and Receiver.	,, 200
122	(1)	Default in filing with Registrar particulars of satisfaction of mortgage or charge.	Company and Officer.	,, 500 a day. on conviction
122	(2)	Default in complying with other requirements of Act as to registration of mortgages or charges.	do	,, 1,000 do
122	(3)	Issuing debentures, etc., without copy of certificate of registration endorsed thereon.	Person responsible	do
123	(2)	Omission of entry in company's Register of Mortgages.	Director Officer, etc.	,, 500
124	(2)	Refusing inspection of copies of mortgage, or of company's Register of Mortgages.	Company and Officer.	,, 50 & ,, 20 a day

Section	*Offence*	*Offender*	*Maximum Penalty.*
125 (3)	Refusing inspection or copy of Register of debenture-holders or of trust deed.	Company and Officer.	Rs. 50 & ,, 20 a day.
133 (3)	Default in laying before company or in * issuing Balance-sheet and Profit and Loss Account under Sec. 131, or issuing balance-sheet, etc. not in accordance with Secs. 131 to 133.	do	,, 500
134 (4) *	Not filing with Registrar copy of Balance sheet, etc.	do	,, 50 a day.
136 (4)	Omission by banking company, etc. to publish half-yearly statement in prescribed form, etc.	do	,, 50
137 (3)	Refusing to furnish Registrar with information or explanation called for.	Person refusing.	,, 50

140	(3)	Refusing to produce books before Inspector appointed by Govt. or to answer questions.	Officer refusing.	,, 50
142	(3)	Refusing to produce books before Inspector appointed by company.	do	,, 50
153	(4)	Default in annexing copy of order sanctioning arrangement etc. to copy of memorandum issued after the date of order.	Company and Officer.	,, 10 per copy issued
153A	(3)	Default in delivering certified copy of order sanctioning reconstruction, etc., to Registrar within 14 days after completion thereof.	do	,, 50
154	(2)	Default in filing with Registrar Prospectus or Statement in Lieu of Prospectus on conversion of Private Company into Public Company.	do	,, 500
177A	(5)	Default in submitting to Official Liquidator statement of affairs etc.	Director, Manager, Secretary.	,, 100 a day.

Section	Offence	Offender.	Maximum Penalty.
206 (2)	Omission to advertise Winding up Resolution in Gazette, etc.	Company and Officer.	Rs. 50 a day.
209A (6)	Omission to advertise notice of Creditors' Meeting and to summon the same.	do	,, 1,000
235 (1)	Misfeasance or breach of trust by directors, officers etc.	Director Officer etc.	Compensation
236	Destruction, mutilation and falsification of books, etc.	do	Imprisonment for 7 years and fine Prosecution by Crown.
237	Delinquent Director, Officer etc.	do	
238	Giving false evidence.	Any person (Director, Officer etc.)	do
238A	Fraud, forgery, concealment of property, etc. by director, officer etc. regarding company's affairs, account books etc.	Director Officer etc.	Imprisonment 2 to 5 years

277L (4)	Carrying on businesses by banking company after two years of commencement of Amendment Act 1936 other than those mentioned in Sec. 277F.	Director or Officer.	Rs.	500 a day.
"	Banking company being managed after said period by managing agent other than banking company.	do	"	500 "
	Creating charge upon unpaid capital (*Banking Company*).	do	"	500 a day.
"	Omission to maintain reserve fund or to invest money to the credit of such fund in authorised securities or to maintain cash reserve (*Banking Company*).	do	"	500 "
"	Forming or holding shares in subsidiary company except its own (*Banking Company*).	do	"	500 "
"	Default in filing statement as to cash reserve before tenth of every month (*Banking Co.*).	do	"	100 "

Section	*Offence*	*Offender*	*Maximum Penalty.*
282	False statement in balance-sheet etc.	Director, Officer etc.	Imprisonment 3 years and fine
282A	Wrongfully obtaining possession and/or withholding of Company's property by directors, officers etc.	Director, Officer etc.	Fine of Rs. 1,000 or imprisonment in default 2 years
282B (5)	Misapplication of Securities of Employees by directors, officers etc.	do	Rs. 500 on conviction.

NOTE:—Those marked thus * with asterisk do not apply to Private Companies.

APPENDIX II

TABLE A OF THE FIRST SCHEDULE TO THE ACT

(Regulations Compulsorily Applicable to all Companies (under Section 17 of the Act) are printed in Italics and those not applying to Private Companies other than subsidiaries of Public Companies are marked with Asterisk thus *)

Preliminary

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

Shares

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company, may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to

dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company liable to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may subject to the provisions of section 66A of the Indian Companies Act, 1913 be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. Except to the extent allowed by section 54 A of the Indian companies Act, 1913, no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of the company's shares.

Lien

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company: but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable, thereon.

10. The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled

to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A B of , in consideration of the sum of rupees paid to me by C. D of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any

transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but

shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof in the same manner, and subject to the same regulations, as, and subject to which, the shares from which

the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Shares Warrants

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-

warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital

41. The directors may, with the sanction of the company in general meeting increase the share capital by such sum, to be divided into shares of such amount as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may by ordinary resolution,—

(a) consolidate and divide its share capital into shares of larger amount than its existing shares;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (*1*) of section 50 of the Indian Companies Act, 1913;

(*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

44A. The company may, by special resolution, reduce its share capital in any manner and with, and subject to any incident authorised and consent required, by law.

General Meetings

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913.

46. A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting, being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting

49. Subject to the provisions of sub-section (2) of section 81 of the Indian Companies Act, 1913, relating to special resolutions, fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Indian Companies Act, 1913, or the regulations of the company, entitled to receive such notices from the company; but the accidental omission to give notice to or the non-receipt of notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time

when the meeting proceeds to business; save as herein otherwise provided, two members in the case of a private company and five members in the case of any other company personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show

of hands) demanded in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.

61. In the case of joint-holders, the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless he is a member of the company.

66. *The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.*

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited.

"I of in the district of being a member of the Company, Limited, hereby

appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Directors

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913.

Powers and Duties of Directors

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or

manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he cease from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of the managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors

77. The office of director shall be vacated if the director— ;

(a) fails to obtain within the time specified in sub-section (1) of section 85 of the Indian Companies Act, 1913, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment; or

(b) is found to be of unsound mind by a Court of competent jurisdiction; or

(c) is adjudged insolvent; or

(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or

(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or

they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

95. *The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.*

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. *No dividends shall be paid otherwise than out of profits of the year or any other undistributed profits.*

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting

contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts

103. The directors shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.

105. *The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being director) shall have any right of inspecting any account or book or document of the company except as conferred by*

law or authorised by the directors or by the company in general meeting.

106. The directors shall as required by sections 131 and 131 A of the Indian Companies Act, 1913, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, income and expenditure accounts, balance-sheets, and reports as are referred to in those sections.

107. *The profit and loss account shall in addition to the matters referred to in sub-section (3) of section 132 of the Indian Companies Act, 1913, show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.*

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, fourteen days previously to the meeting, be sent to the persons

entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Audit

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Notices

112. *(1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.* . .

(2) *Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

113. *If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.*

114. *A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.*

115. *A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might has been given if the death or insolvency had not occurred.*

116. *Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency would be tntitled to receive, notice of the meeting.*

APPENDIX III

Leading Cases Important for Company Secretaries.

Shares

(1) *Trevor v. Whitworth,* (1887) 12 App. Cas. 409.

A company cannot be a member of itself; therefore, it is incapable of owning or purchasing its own shares, notwithstanding any power contained in the memorandum or articles of association.

(*Followed in re Walters' Deed of Guarantee* (1933) 1 Ch.321).

(2) *Hilder v. Dexter,* (1902) A. C. 474— An option to take up further shares at par may be given to a specified person in consideration for his subscribing for shares.

The directors of the United Gold Coast Mining Properties Ltd. issued 33,333 shares in January, 1901, to fourteen persons out of whom Hilder was one. Hilder received 6,975 on the terms that he shall have the option during a period of one year from 3rd January 1901, to take at par a further ordinary share of £1. and if such share is taken, a further option during a period of two years from 3rd January, 1901, to take at par further ordinary share of £1. In July, 1901, the £1 shares were being sold at £2,17s,6d., per share, and Hilder exercised his option. Dexter sued to restrain the company and directors from carrying out the agreement with Hilder and others.

Held, the agreement was valid.

(3) *Andrews v. Gas Meter Co.,* (1897) 1 Ch. 361.

A company can, by taking proper steps, create and issue preference shares, although not authorised to do so by its memorandum or by its articles as originally framed.

(4) *Spargo's Case* (1872) 8 Ch. App. 407.

Shares might be paid up in cash by setting off by agreement a debt *presently due* to the shareholder from the company against the amount due on the shares.

(5) *Will v. United Lankat Plantations Co. Ltd.*, (1914) A. C. 11.

Preference shareholders are not *prima facie* entitled to receive any dividend beyond the fixed preferential dividend.

(Apart from special provisions in the articles, a preference share-holder is not entitled on a winding up to have his capital paid off in priority to the other share-holders (*Re Madame Tussand and Sons Ltd.* (1927) 1 Ch. 657). But he is entitled, after payment of all the paid-up capital, to participate in the surplus assets of share-holders in proportion to the nominal amount of the shares (*Re Bridgewater Navigation* Co. (1889) App Cas. 525).

Share Certificates

(1) *Bloomenthal v. Ford*, (1897) A. C. 156.

A company, which has issued a share certificate stating that the shares are fully paid, may be estopped from claiming that the shares are not fully paid, unless the share-holder is aware that a mistake has been made.

(2) *Dixon v. Kennaway & Co* (1900) 1 Ch. 883.

The issue of a share certificate by a company estops the company from denying its accuracy as against any person who acts on the faith of the certificate, including the person to whom it is issued; and that person, if *"put to rest"* by the certificate so as to lose his remedy against the broker or transferor, is entitled to damages against the company.

(3) *Ruben v. Great Fingall Consolidated*, (1906) A. C. 439.

The issue by the secretary of a company of a forged transfer share certificate does not create estoppel as against the company.

Rowe was secretary of the company, and he applied to Ruben for £20,000 to enable him to buy 5,000 shares in the company Ruben arranged with a firm of bankers for a loan of the purchase-money. Rowe forged a transfer of 5,00 shares with Storey as transferor; the bank executed it as transferee; and the bank received a certificate to that effect. The signatures of the directors were forged by Rowe. The fraud having been discovered, Ruben was ordered to pay £20,000

to the bank. Ruben sued the company as liable for Rowe's fraud.

Held, the company was not liable.

Transfer of Shares

(1) *Weston's Case,* (1870) 4 Ch. 20.

The right of a transfer of shares is *prima facie* free.

(2) *Soviet Generate De Paris & another, In re,* (1886) 11 App. Cas. 20.

A deed of transfer executed in blank i.e. without the insertion of the transferee's name is invalid unless re-delivered to the transferor.

(3) *The various cases that may arise in connection with transfer of shares may be classified as follows:—*

(a) A share-holder transfers his shares, and the transfer is certified, but instead of his certificate being cancelled, inadvertently it is returned to him. Taking advantage of this, he again transfers the shares to a second transferee.

The company is under no liability as it owes no duty to a *second transferee:* (*Longman v. Bath Electric Tramways* (1905) 1 Ch. 646).

(b) There is an implied contract on the part of the person lodging the transfer that he will indemnify the company against loss by forgery; a broker is equally liable (*Sheffield Corporation v. Barclay* (1905) A. C. 392).

(c) A broker acting for a transferor when he has no authority to do so, is liable for breach of warranty of authority (*Starkey v. Bank of England,* (1903) A. C. 114).

(*d*) The same liability attaches to a person who induces the company to register a forged transfer by identifying an impersonater as owner of the shares (*Bank of England v. Cutler,* (1907) 1 K. B. 889).

(c) Where a certificate is issued on a forged transfer, and on the strength of that certificate the shares are transferred to a *bona-fide* purchaser for value, the transferee obtains no right to be placed on the register, but is entitled to damages from the company (*Balkis Consolidated Co. v Tomkinson,* (1893) App. Cas. 396).

The company is also liable to restore the true owner on the register and his shares (*Barton v. North Staffordshire Ry. Co.* (1888) 38 Ch. D. 458).

Transmission of Shares

(1) *Buchan's Case* (1879) 4 App. Cac. 549.

An executor, administrator, trustee, or other representative share-holder, who becomes registered holder of the shares, thereby becomes personally liable for calls made in respect of the shares.

A trustee more than 20 years before had authorised some City of Glasgow Bank shares to be transferred into his own name. The Bank suspended payment on 2nd October, 1878, and on 22nd the trustee resigned his office of trustee. He sought to escape liability as a contributory. *Held,* the trustee was liable as a contributory.

(2) *James v. Buena Ventura Nitrate Grounds Syndicate Ltd.,* (1896) 1 Ch. 456.

A deceased share-holder whose name is still registered in the books as the holder of the shares is a member of the company, and his estate is entitled to any advantages accruing from his membership, e.g. a right to a *pro tanto* allotment of a new issue of shares.

Dividends

(1) *Oakbank Oil Co., v. Crum,* (1883) 8 App. Cas. 65.

If articles provide that dividends are to be paid to members "in proportion to their shares," the dividend must be paid according to the nominal value of the shares.

(2) *Moxham v. Grant* (1900) 1 Q. B. 88.

Shareholders who have knowingly received a dividend paid out of capital must indemnify the directors, if the latter have been compelled to make restitution of the money thus illegally paid.

INDEX.

SPECIAL FEATURES

1. All Statutory *Rights, Powers. Duties and Liabilities of* Company *Directors, Managing Agents and Other Officers* are Set Forth in an easy, understandable and business-like language shorn of all legal technicalities.

2. *The Order* followed in the book is *Natural & Logical.*

3. *All Important Indian Cases* decided up-to September, 1939, have been quoted in their appropriate places.

4. *Summaries of Directors' Duties, Liabilities and Statutory Offences are given* as a *Ready-Reference.*

5. *Directors* have not to *Grope* into a *Mesh of 290 Sections of the Companies Act.* They have the *Facility* of having before their *Eyes Apt Interpretation* of various *Provisions of Law on Matters Directly Concerning them. Thus* their *Immediate Needs are Readily Met and Suitably Served.*

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